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In the Supreme Court of the United States

OCTOBER TERM, 1947

No. 695

UNITED STATES OF AMERICA, APPELLANT

v.

CONGRESS OF INDUSTRIAL ORGANIZATIONS, PHILIP MURRAY, OFFICER THEREOF

ON APPEAL FROM THE UNITED STATES DISTRICT COURT FOR THE DISTRICT OF COLUMBIA

BRIEF FOR THE UNITED STATES

OPINION BELOW

The opinion of the district court (R. 14–19) has not yet been reported.

JURISDICTION

The judgment of the district court was entered March 17, 1948 (R. 20–21). The notice of appeal was filed March 17, 1948. The jurisdiction of this Court is invoked under the Criminal Appeals Act, as amended by the Act of May 9, 1942, 56 Stat. 271, 18 U. S. C., Supp. V, 682.

QUESTIONS PRESENTED

Section 313 of the Corrupt Practices Act, as amended by Section 304 of the Labor Management Relations Act of 1947, prohibits contributions or expenditures by corporations or labor organizations in connection with a federal election.

1. On the basis of the decision below, the question presented is whether, insofar as the act prohibits expenditures by a labor organization in connection with a federal election, it is on its face an unconstitutional violation of the First Amendment.

It is anticipated that, in support of the judgment of the district court, respondents will also raise the following questions:

2. Whether Section 304 is too indefinite to prescribe a standard of guilt as required by the Fifth and Sixth Amendments;

3. Whether Section 304 arbitrarily discriminates against labor organizations in violation of the Fifth Amendment.

STATUTE INVOLVED

Section 313 of the Federal Corrupt Practices Act, as amended by Section 304 of the Labor Management Relations Act, 1947 (Public Law 101, 80th Congress, 1st sess., c. 120), provides:

> SEC. 313. It is unlawful for any national bank, or any corporation organized by authority of any law of Congress, to make a contribution or expenditure in connection

with any election to any political office, or in connection with any primary election or political convention or caucus held to select candidates for any political office, or for any corporation whatever, or any labor organization to make a contribution or expenditure in connection with any election at which Presidential and Vice Presidential electors or a Senator or Representative in, or a Delegate or Resident Commissioner to Congress are to be voted for, or in connection with any primary election or political convention or caucus held to select candidates for any of the foregoing offices, or for any candidate, political committee, or other person to accept or receive any contribution prohibited by this section. Every corporation or labor organization which makes any contribution or expenditure in violation of this section shall be fined not more than $5,000; and every officer or director of any corporation, or officer of any labor organization, who consents to any contribution or expenditure by the corporation or labor organization, as the case may be, in violation of this section shall be fined not more than $1,000 or imprisoned for not more than one year, or both. For the purposes of this section "labor organization" means any organization of any kind, or any agency or employee representation committee or plan, in which employees participate and which exists for the purpose, in whole or in part, of dealing with employers concerning griev-

ances, labor disputes, wages, rates of pay, hours of employment, or conditions of work.

STATEMENT

An indictment was returned against respondents in the United States District Court for the District of Columbia, charging violations of Section 313 of the Corrupt Practices Act, as amended by Section 304 of the Labor Management Relations Act of 1947. The first count alleges that the Congress of Industrial Organizations, a labor organization, made expenditures from the funds of the organization for the publication of a periodical called the "C. I. O. News," including the publication of the issue for July 14, 1947, in which, in anticipation of and in connection with the holding of a special election to elect a representative in Congress from the Third Congressional District of Maryland, there was published an article (set forth in full in the indictment) urging members of the Congress of Industrial Organizations to vote for a particular candidate. The indictment alleges that funds of the labor organization were expended for the publication and distribution of the July 14, 1947, issue of the "C. I. O. News" and for the publication and transportation of a thousand extra copies of that issue in connection with the aforesaid election. (R. 2–6.)

Respondent Philip Murray was charged in the second count with a violation of the statute in

that, as president of the Congress of Industrial Organizations, he consented to the expenditures alleged in the first count (R. 6).

Respondents moved to dismiss the indictment on the ground that the statute on which it was based is unconstitutional. They contended that the statute infringes the right of free expression of opinion guaranteed by the First, Ninth, and Tenth Amendments to the Constitution; that it is too indefinite to prescribe a standard of guilt as required by the Fifth and Sixth Amendments; and that it arbitrarily discriminates against labor organizations in violation of the Fifth Amendment (R. 7–8).

On March 17, 1948, the district court sustained the motion to dismiss (R. 20–21). The district court held that the indictment charged an offense under Section 304 of the Labor Management Relations Act, but that the statute, insofar as it prohibits the expenditures of funds of a labor organization in connection with a federal election, is, on its face, an unconstitutional abridgement of freedom of speech, freedom of press and freedom of assembly (R. 14–19).

In view of its holding in this respect, the district court declined to pass on the questions of whether the statute is too indefinite to prescribe a standard of guilt and whether it arbitrarily discriminates against labor organizations (R. 19).

Inasmuch as the decision of the district court was based on the unconstitutionality of a statute,

the Government has appealed directly to this Court under the Criminal Appeals Act. On March 29, 1948, this Court noted probable jurisdiction (R. 23).

SUMMARY OF ARGUMENT

I. Section 304 of the Labor Management Relations Act, 1947 represents a gradual evolution of congressional policy, designed to secure free and untrammeled federal elections by controlling the power represented by the aggregate wealth of entities, organized primarily for non-political purposes, and composed of persons not necessarily representing the same political point of view. The legislative history of the section shows that Congress was motivated by a desire to limit the use of money for political purposes by those organizations in a position to exercise a disproportionate influence on federal elections, and to insure that money contributed primarily for non-political purposes would not be used in the interest of a political objective to which the contributor might be opposed.

In 1907, Congress became concerned with the great influence represented by the aggregate wealth in the hands of corporations, and undertook to curb that influence by prohibiting political contributions by corporations in connection with federal elections. By 1943, Congress found that the dangers to free elections which it had previously noted in the aggregation of wealth in the

hands of corporations had extended to the aggregation of wealth in the hands of labor unions. It therefore, by the War Labor Disputes Act of 1943, extended to labor unions the prohibition against contributions in connection with federal elections theretofore imposed against corporations. Subsequently, committees investigating campaign expenditures found that the ban against contributions was being evaded by labor organizations which were themselves expending large sums of money on behalf of candidates whom they favored. Section 304 of the Labor Management Relations Act, which prohibited expenditures as well as contributions by corporations and labor organizations, was designed to plug the loophole thus found in the prior laws.

II. Congress has thus found that certain legal entities, organized primarily for purposes not directly political in nature, composed of persons who do not necessarily have the same political views, have, as entities distinct from the individual members, acquired such power arising from combination that they are in a position to exercise a disproportionate influence on federal elections. It has sought to prevent abuse of such power by enforcing political neutrality on the part of the entities in federal elections, leaving those individual members having the same point of view free to combine together and mass their wealth in wholly voluntary organizations. And

to make certain that such association will be in fact voluntary, and not subject to pressure by those in control of the entity, Congress has provided that such association for political purpose be outside the labor organization or corporation itself. The statute is designed to make certain that what purports to be free speech shall actually represent the attitude of those whose money is spent in communicating that speech.

Congress has power to act to preserve the purity of federal elections and may act to surround the entire process with such rules and requirements as it deems necessary and advisable to insure fair and honest elections. *Ex parte Yarbrough*, 110 U. S. 651, 666–667. The statute here involved is merely one aspect of the congressional exercise of such power. Insofar as it prohibits political contributions by labor organizations, it raises no problems of interference with constitutional rights. To the extent, however, that a prohibition against expenditures for political purposes does limit expression of opinion, there does arise the problem of balancing the power of Congress to maintain free elections against the constitutional prohibition against the enactment of legislation abridging freedom of speech, press, and assembly. *United Public Workers* v. *Mitchell*, 330 U. S. 75, 96.

It is well established, however, that First Amendment rights are not absolute and must give

way to the interest of the state in preserving free government. *United Public Workers* v. *Mitchell, supra.* The legislative history of the present statute shows that Congress was well aware of the necessity of balancing the guarantees of the First Amendment against its duty to keep the elective process free and untrammeled. The enactment of this legislation thus represents a deliberate legislative judgment that the danger to free elections arising from the use of the aggregate wealth of the entities covered by the act, by the persons in control thereof, to exercise a disproportionate influence on elections, was sufficiently great to necessitate and justify the incidental impairment of freedom which might result therefrom. We submit that substantial considerations support the legislative judgment in this matter and that this Court should not substitute its judgment for that of the legislature as to the measures necessary to secure free federal elections.

Although First Amendment rights are involved, we do not believe that the "clear and present danger" test, laid down by this Court in many First Amendment cases, is applicable in this field, where the right to be protected, the right of free elections, is as basic to democratic government as the First Amendment itself. In the case most analogous to this, *United Public Workers* v. *Mitchell*, 330 U. S. 75, this Court

spoke in terms of balancing of constitutional rights, rather than in terms of clear and present danger.

The problem is not, however, essentially different if the clear and present danger test is applicable. The fact is that, by passing this legislation, Congress has determined that the use of the aggregate wealth of entities by persons in control thereof for political purposes which may not accord with the views of those making up the entity is a clear and present danger to free elections. The problem still remains whether this Court may substitute its judgment for that of the legislature.

In applying the clear and present danger test, this Court has indicated that the factors to be considered are the nature of the right protected, the extent to which rights guaranteed by the First Amendment are impaired, the seriousness and imminence of the danger to the right which is protected. *Thomas* v. *Collins*, 323 U. S. 516, 530; *Bridges* v. *California*, 314 U. S. 252, 261–263.

Here the right protected, the right to free elections, is basic to democratic government. Restraints are imposed only against legal entities which, as such, have no power to vote. No individuals are restricted in their right to exercise First Amendment rights, either alone or in concert with others who voluntarily join together to express the same political point of view. The danger of disproportionate influence on elections, and of coercion of minorities within the organiza-

tion, was found by Congress, on the basis of facts before it, to be substantial and real. The fact that, in Great Britain, where members of trade unions have traditionally been more unified in their political beliefs than in this country, political activities by trade unions have for years been subject to statutory regulation designed to achieve the objective sought to be achieved by the statute here involved, further suggests that there is a substantial basis for the congressional judgment in this matter. The danger sought to be reached by this statute is certainly a present one. The only activity barred is activity designed to have an immediate influence on an actual election.

Thus, even if the clear and present danger test measures the constitutionality of this statute, the statute does meet the standards laid down by this Court in applying that test.

III. The statute is sufficiently definite to prescribe a standard of guilt. There is a whole mass of activities, commonly described as electioneering, which, when undertaken by corporations or labor organizations, clearly falls within the interdiction of the statute. The only area of doubt lies in the possible existence of border line cases, and that possibility does not render a statute constitutionally vulnerable. *United States* v. *Petrillo*, 332 U. S. 1, 7.

Furthermore, the phrase "in connection with an election," as used in Section 304, when read in

the light of its legislative history, clearly means for the purpose of influencing the result of an election. Purposefulness, *scienter*, is thus a necessary element of the offense, and relieves the statute of the objection that it punishes without warning. *Screws* v. *United States*, 325 U. S. 91, 101–102.

IV. The statute does not arbitrarily discriminate against labor unions. Congress has acted to meet evils as it found them and has waited until a particular danger seemed to it to become pressing before taking action thereon. The ban on political contributions was imposed against corporations many years before it was imposed against labor organizations. The ban on expenditures was imposed only after Congress had become convinced that the prohibition against contributions was being evaded in the form of expenditures.

The legislative history shows that the statute was not extended to unincorporated associations of employers because Congress thought that the ban on corporate contributions would prevent the use of corporate funds for political purposes through the medium of unincorporated associations. The legislative history also shows that other types of unincorporated associations were not brought under the interdiction of the statute because Congress had not found any danger to the electoral process from such organizations.

Congress has advanced step by step to meet the evils as it found them arising from the use of the

aggregate wealth of entities to exercise the combined power of the whole organization in support of the views of those in control, which may not necessarily constitute the views of all the members. It has taken action only where it found danger. That is not unconstitutional discrimination. See *United States* v. *Petrillo*, 332 U. S. 1–9; *Alabama State Federation of Labor* v. *McAdory*, 325 U. S. 450, 471–472.

ARGUMENT

I

THE LEGISLATIVE HISTORY OF THE RESTRICTION ON POLITICAL CONTRIBUTIONS AND EXPENDITURES SHOWS THAT THE PURPOSE OF THE CONGRESS IN ENACTING THIS PROVISION WAS TO SECURE ELECTIONS RESPONSIVE TO THE WILL OF THE PEOPLE (A) BY LIMITING THE USE OF MONEY FOR POLITICAL PURPOSES BY THOSE ORGANIZATIONS IN A POSITION TO EXERCISE A DISPROPORTIONATE INFLUENCE IN ELECTIONS, AND (B) BY PROHIBITING THE USE OF MONEY CONTRIBUTED AS UNION DUES OR FOR OTHER NON-POLITICAL PURPOSES IN THE INTEREST OF A PARTY OR CANDIDATE TO WHICH THE CONTRIBUTOR MIGHT BE OPPOSED

Section 304 of the Labor Management Relations Act of 1947 represents a gradual evolution of congressional policy, designed to secure free and untrammeled federal elections by controlling the power represented by the aggregate wealth of entities organized primarily for non-political purposes and composed of persons not necessarily representing the same political point of view. The history of the legislation leading up to the statute presently involved shows that it was motivated by a sense of the dangers to free

elections inherent in the massing of wealth in the hands of entities which would enable those in control of such wealth to exercise a disproportionate influence on elections. Congress has sought to obviate those dangers by imposing an enforced neutrality on the part of entities as such, leaving the individual members thereof free to combine together voluntarily to express their point of view in a manner which will make certain that their political activities are wholly free from the pressure which may be exerted by the entities.

A. *The 1907 Act*

The proscription of contributions for the purpose of influencing the outcome of federal elections was first enacted in 1907. Act of January 26, 1907, c. 420, 34 Stat. 864. In substance, the 1907 Act declared it unlawful for a corporation organized under authority of any federal statute to make a money contribution in connection with federal, state, or local elections and declared it unlawful for any corporation, regardless of the authority under which organized, to make a money contribution in connection with any Federal election.

The hearings and debates preceding enactment of the 1907 Act reflect that the primary factor motivating its enactment was a grave concern on the part of the Congress over the strong

influence brought to bear on elections by corporations. Complaint that corporate contributions exercised great influence is recorded as early as 1892 and it was estimated that a sum in excess of 16 million dollars was spent in the presidential campaign of 1896. Hearings before the House Committee on the Election of President, etc., March 12, 1906, pp. 38 and 39. During the hearings, the chairman of a committee sponsoring legislation to give publicity to contributions, Perry Belmont, quoted the following statement by the then Secretary of State in summarizing the necessity for regulation of the use of corporate moneys in elections (p. 12):

> The idea is to prevent * * * the great railroad companies, the great insurance companies, the great telephone companies, the great aggregations of wealth from using their corporate funds, directly or indirectly, to send members of the legislature to these halls in order to vote for their protection and the advancement of their interests as against those of the public. It strikes at a constantly growing evil which has done more to shake the confidence of the plain people of small means of this country in our political institutions than any other practice which has ever obtained since the foundation of our Government. And I believe that the time has come when something ought to be done to put a check to the giving of $50,000 or $100,000 by a great corporation

> toward political purposes upon the understanding that a debt is created from a political party to it.

Public interest in this problem was increased by disclosures of the Armstrong Committee in New York, which, under the guidance of Charles Evans Hughes, discovered that one life insurance company had contributed $50,000 to one of the national political committees during the 1904 presidential campaign. See *People ex rel. Perkins* v. *Moss*, 187 N. Y. 410 (1907). A clamor arose for legislation prohibiting political contributions by corporations. Thus, on November 9, 1904, Alton B. Parker, who had been the Democratic Presidential candidate stated in an address (Hearings of 1906, *supra*, p. 56):

> The greatest moral question which now confronts us is, Shall the trusts and corporations be prevented from contributing money to control or aid in controlling elections.

In his message of December 5, 1905, to the Congress, President Theodore Roosevelt requested legislation to curb political contributions by corporations, stating (40 Cong. Rec. 96):

> All contributions by corporations to any political committee or for any political purpose should be forbidden by law; directors should not be permitted to use stockholders' money for such purposes * * *.

Again, in his annual message on December 4, 1906, President Roosevelt requested legislation, stating (41 Cong. Rec. 22):

> I again recommend a law prohibiting all corporations from contributing to the campaign expenses of any party. * * * Let individuals contribute as they desire; but let us prohibit in effective fashion all corporations from making contributions for any political purpose, directly or indirectly.

A secondary factor motivating enactment of the 1907 Act was the feeling on the part of the Congress that the diversion of corporate stockholders' money to further the interests of a party or candidate constituted an embezzlement of stockholders' money. Thus, during the hearings on the 1907 law, Congressman Williams stated (Hearings of 1906, *supra*, p. 76):

> Of course there are two reasons for the general idea of this bill. One is * * * that if corporations did not contribute there could not be any great campaign funds. * * * The second reason and the second morality at the bottom of it all is that no corporation has the right and no board of directors of a corporation and no manager of a corporation has the right, to embezzle the money belonging to the stockholders of the corporation and to divert it from its legitimate use to a purpose for which the company was not chartered by appropriating it to Democratic, Republican, Populist, Socialist, or any other campaign fund. The thing is dishonest in its every element.

President Roosevelt's message of December 5, 1905, quoted above, also mentioned this factor.

B. *The 1909 Act*

By the Act of March 4, 1909, c. 321, Sec. 83, 35 Stat. 1103, which was a codification of the Federal Penal Laws, the 1907 statute was repealed and reenacted without change. The debates on the bill, S. 2982, demonstrate a continuing concern on the part of the Congress regarding the strong influence of corporations over elections. See 42 Cong. Rec. 695–703. Consideration was even given to extending the proscription of political contributions by corporations to elections of State legislatures, since at that time United States Senators were elected by State legislatures. In support of this view Congressman Hardy stated (42 Cong. Rec. 696):

> The time has been reached when the great power in this Government may be money and not conscience, and I believe that it is as absolutely necessary to prevent the contribution by big corporations of money for the purpose of electing legislators who may elect Senators as it is to prevent the contribution of money directly in the election [of Senators] by the State legislatures. I make the amendment with a view to purification of the ballot box.

It was further suggested by Congressman Kimball that the prohibition of "money" contribution by corporations was inadequate and that the prohibition should be extended to corporate contribu-

tions of anything of value to a political campaign. He stated (42 Cong. Rec. 696):

> the section under consideration * * * was doubtless called forth by the revelations of the investigation of the great insurance companies in the State of New York. * * * it was the intention of Congress to prohibit corporations * * * from contributing their assets to political contests. But under the section as it now stands it simply prohibits the contribution of money. I contend that it ought to be extended so as to include the contribution of any other thing of value. * * * The House, I assume, is sincerely in favor of protecting the assets of corporations from being dissipated in this way. It is certainly our intention that they should not be allowed to spend money or any of their assets for the purpose of corrupting elections * * *.

However, because of doubt as to the constitutionality of the proposal to extend the proscription to elections of State legislatures and because the bill before the Congress was a bill for codification of all the penal laws, no changes were effected.

C. *The 1925 Act*

In 1921 the Supreme Court, in the case of *Newberry* v. *United States*, 256 U. S. 232, held that Federal corrupt practices legislation as ap-

plied to primary elections of candidates for the Senate was unconstitutional on the ground that elections, within the original intendment of Section 4 of Article I of the Constitution, were those wherein Senators should be chosen by State legislatures, and that the Seventeenth Amendment, providing for election of Senators by the people, did not modify the Congressional power under Section 4 of Article I to regulate the times, places and manner of holding elections. This decision was generally considered to have invalidated all of the Federal Corrupt Practices legislation relating to nominations. See Hearings before the House Committee on Election of President, etc., 1922, pp. 4–6, and 30. It was felt by many in the Congress that any legislation affecting election processes not known at the time of adoption of the Constitution was unconstitutional. (Hearings of 1922, *supra*, p. 30; Hearings before the House Committee on Election of President, etc., 1924, p. 8; 65 Cong. Rec. 9103; 66 Cong. Rec. 2629.) Accordingly, a number of bills were introduced in the House and Senate for the purpose of completely revising the Federal Corrupt Practices legislation in the light of the *Newberry* decision. A comprehensive bill introduced by Congressman Cable, entitled "The Federal Corrupt Practices Act of 1924," was made a part of a postal pay bill, which passed both Houses, but was vetoed by President Coolidge, who stated that he would have approved the corrupt practices provisions if they had stood alone. (65 Cong.

Rec. 10328-9, 10618, 10620, 10652, 11015, and 11128.) At the following session new postal pay increase bills, S. 3674 and H. R. 11444, were introduced and the Cable bill was offered as an amendment to them. The proposed legislation was enacted as the Act of February 28, 1925, c. 368, 43 Stat. 1070, Title III of which is popularly titled "The Federal Corrupt Practices Act, 1925."

In the 1925 Act the proscription against corporate contributions for political purposes was reenacted with amendments as Section 313 thereof. The significant amendments were as follows: (a) The phrase "money contribution" appearing in the 1907 and 1909 Acts was changed to "contributions" and "contribution" was non-exclusively defined in these words (Sec. 302 (d)),

> The term "contribution" includes a gift, subscription, loan, advance, or deposit, of money, or anything of value, and includes a contract, promise, or agreement, whether or not legally enforceable, to make a contribution;

(b) the prohibition of corporate contributions in connection with "any election by any State legislature of a United States Senator" was changed to "any election at which * * * a Senator * * * [is] to be voted for * * *," to conform to the change in Senatorial elections provided in the Seventeenth Amendment, and the proscription was extended to elections of Delegates

and Resident Commissioners to Congress; (c) a provision was added making it unlawful "for any candidate, political committee, or other person to accept or receive any contribution prohibited by this section"; and (d) by definition primaries and conventions were excluded from the scope of the Act to conform to the *Newberry* decision (Sec. 302 (a); H. Report No. 721, to accompany H. R. 8596, 68th Cong., 1st Sess., p. 3).

The debates preceding the 1925 Act again emphasize the concern felt for the influence exerted on elections by large aggregations of money. Thus Senator Robinson stated (65 Cong. Rec. 9507–9508):

> We all know * * * that one of the great political evils of the time is the apparent hold on political parties which business interests and certain organizations seek and sometimes obtain by reason of liberal campaign contributions. Many believe that when an individual or association of individuals makes large contributions for the purpose of aiding candidates of political parties in winning the elections, they expect, and sometimes demand, and occasionally, at least, receive, consideration by the beneficiaries of their contributions which not infrequently is harmful to the general public interest. It is unquestionably an evil which ought to be dealt with, and dealt with intelligently and effectively.

Similar statements appear at 66 Cong. Rec. 2629–2630.

D. *The War Labor Disputes Act*

In 1943 the proscription against the making of contributions in connection with Federal elections[1] was extended to labor organizations.[2] The extension was a temporary one, being effected in Section 9 of the War Labor Disputes Act which Act by its terms was to expire at the end of the war. Act of June 25, 1943, c. 144, Section 9, 57 Stat. 167–168. The hearings on the Smith-Connally bill, which as enacted became the War Labor Disputes Act, were devoted primarily to shaping the proposed machinery for handling strikes during the war period and contain little information relative to the political contributions provision. This provision was neither contained in the bill as it passed the Senate, S. 796, 78th Cong., 1st Sess., nor in the bill as reported by the Military

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[1] While the Supreme Court already had recognized, in *United States* v. *Classic*, 313 U. S. 299, the power of the Congress to regulate primaries, and such Congressional authority already had been exercised in some provisions of the Hatch Act, this proscription was made applicable only to elections.

[2] In 1940 Congress had limited the amount which a labor organization may contribute for political purposes by declaring it unlawful for any "person" to contribute to any candidate or political committee more than $5,000 in any calendar year or in connection with any campaign for "nomination or election" to any Federal office. "Person" was defined to include any association, organization or group of persons, which would include labor organizations. 54 Stat. 767; 18 U. S. C. 61m. Contributions made to or by a State or local committee or other State or local organization were excepted.

Affairs Committee of the House. H. Report No. 440 to accompany S. 796. However, in May 1943 a subcommittee of the House Committee on Labor took testimony on another bill, H. R. 1483, which provided for the prohibition of political contributions by labor organizations (Hearings before a Subcommittee of the Committee on Labor, House of Representatives, 78th Cong., 1st Sess., on H. R. 804 and H. R. 1483; May 1943).

During these hearings, Congressman Landis of Indiana stated that prohibition of political contributions by labor organizations was desirable because (a) substantial contributions by labor organizations to the campaign of candidates for high office give such organizations undue influence and control over successfully supported candidates, reference being made to the contribution by the United Mine Workers during the 1936 campaign (Hearings of 1943, *supra,* pp. 2, 4), and (b) it is unfair to union members for a union to contribute from the general union funds support to a party or candidate to which a portion of the union members are opposed (Hearings of 1943, cited *supra,* pp. 117, 118, 133). Labor union officials testifying at these hearings objected to the provision on the grounds, (a) that proscription of political "contributions" would proscribe expenditures for political purposes as well (pp. 45, 46, 85, 116, 146), (b) that labor organizations are not analogous to corporations—which are covered by the proscription—but are analogous to

business associations and non-profit associations—which are not included in the proscription (pp. 45, 46, 54, 55, 132), and (c) that the proposal merely demonstrated fear on the part of some that, through the participation of labor unions, the people would exercise the political power that is theirs (pp. 116, 129, 139).

Following the hearings on H. R. 1483, Congressman Harness introduced a substitute for the Smith-Connally bill containing the proscription of political contributions by labor organizations. (89 Cong. Rec. 5328.) During the debates on the substitute, Congressman Halleck indicated that a basis for the restriction on political contributions by labor organizations was that a union member's money should not be used by the union for a political purpose to which the member was opposed. (89 Cong. Rec. 5334.) A similar basis was indicated in the Senate debates by Senator Revercomb. (89 Cong. Rec. 5792.) Although there was objection to the provision on the grounds that voluntary associations other than labor unions were not included within its scope and that the provision had no relevancy to a war bill, the bill was passed by both houses. (89 Cong. Rec. 5341, 5629, 5734, 5720, 5721, 5754, 5755, 5781, 5782.) President Roosevelt vetoed the bill and in his veto message made the following comment on the political contributions provision (Senate Document No. 75, 78th Cong., 1st sess., p. 3):

> Section 9 of the bill prohibits for the period of the war political contributions by labor organizations. This provision obviously has no relevancy to a bill prohibiting strikes during the war in plants operated by the Government or to a "War Labor Disputes Act." If there be merit in the prohibition, it should not be confined to war-time, and careful consideration should be given to the appropriateness of extending the prohibition to other nonprofit organizations.

The bill was passed over his veto.

As in the case of the 1907, 1909, and 1925 Acts, the legislative history of the 1943 Act shows that the principal basis for limiting the use of money by corporations and labor organizations in connection with Federal elections was the securing of elections in accordance with the will of the people through removing disproportionate influences exerted by means of large aggregations of money. There is under the 1943 Act a secondary factor, the protection of free elections by preventing the use in behalf of a candidate or party of moneys collected as dues from union members who adhere to an opposing candidate or party. A similar, if not an identical, position was taken under the 1907, 1909 and 1925 Acts relating to use of stockholders' money for political purposes to which the stockholders did not subscribe.

E. *The Labor Management Relations Act, 1947*

Section 304 of the Labor Management Relations Act, 1947, amended Section 313 of the Federal Corrupt Practices Act in three significant respects: (a) the proscription against political "contributions" was extended to "expenditures," (b) whereas the provision formerly applied only to elections, the law as amended was applied also to primaries, conventions and caucuses held to select candidates for Federal office, and (c) the application of the provision to labor organizations, which under the War Labor Disputes Act had been temporary, was made permanent. Act of June 23, 1947, c. 120, Title III, Section 304, 61 Stat. 159; 2 U. S. C. A. 251.

This development was forecast in some of the hearings on campaign expenditures. In 1945 the Special Committee to Investigate Presidential, etc., Campaign Expenditures for 1944 investigated the activities of the CIO-PAC in the 1944 election. Senate Report No. 101, 79th Cong., 1st Sess. That organization asserted that direct contributions by it were limited to State and local elections and Federal primaries and that its activities in Federal elections were limited to political and educational activities through "expenditures" as distinguished from "contributions" to a political candidate or political committee. The Spe-

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cial Committee concluded that the CIO–PAC had not violated the Corrupt Practices Act since the Act by express limitation is inapplicable to primary elections, and the ban does not extend to "expenditures." The following minority comment was made (p. 24):

> Senators Ball and Ferguson, believing that use of union funds to support a particular candidate or course of political action is wrong in that it opens the way for use of money paid in by individuals for political action which they, as a minority would oppose, believe the Federal law should be clarified so that the prohibition on use of such union funds would apply to primary elections and political conventions and to expenditures as well as contributions by unions. There is no doubt in our minds that Political Action Committee primary and preconvention activity carried over into and influenced greatly the general election result, and the loopholes in the law which purportedly permitted this should be closed. If the Political Action Committee had been organized on a voluntary basis and obtained its funds from voluntary individual contributions from the beginning, there could be no quarrel with its activities or program and in fact both are desirable in a democracy.

The same Committee investigated the distribution of a campaign pamphlet, by the Ohio State Council, CIO, in opposition to Senator Taft, as a pos-

sible "contribution" in violation of Section 313 of the Corrupt Practices Act. The CIO contended that this was an "expenditure" but not a "contribution" prohibited by Section 313 and argued that if it were construed to be a contribution then any newspaper violates the law when it publishes an editorial for the purpose of influencing a Federal election (pp. 57–59). As a result of the hearings, it was recommended that the proscription be extended to primary campaigns and nominating conventions (p. 81). In addition, a minority, Senators Ball and Ferguson, proposed that "expenditures," as well as "contributions," be included in the ban on the ground that the investigation showed a pattern for avoiding the limitation on "contributions" by aiding a favored party or candidate through "expenditures" (p. 83). A majority of the Committee rejected this proposal.[3]

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[3] In rejecting this proposal, the Committee majority stated (pp. 83–84):

"The committee as a result of its investigations unanimously came to the conclusion that prohibitions and sanctions had failed to prevent pernicious political activity in Federal elections. They concluded that free and prompt publicity as to campaign contributions and expenses would be more likely to achieve the desired result. Therefore, its recommendations as set forth above stress the reduction of prohibitions and the increase of publicity. So this last proposal is inconsistent with the general theory of the recommendations.

"Moreover, the extension of the prohibition to include expenditures would tend to limit the rights of freedom of

In 1945, the House Special Committee to Investigate Campaign Expenditures, 78th Cong., 2d Sess., issued its report, No. 2093, on its investigation of the extent and nature of contributions and expenditures in connection with the election of Representatives. The following excerpts from this report are indicative of the strong influence

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speech, freedom of the press, and freedom of assembly as guaranteed by the Federal Constitution. The investigations which the committee has made have brought out the fact that many organizations claiming to be educational are claimed by others to be purely political. The line of demaraction is difficult, if not impossible to draw, since it depends to a considerable extent upon human motives. An expenditure made in connection with an election may well be for the publication of pamphlets, or newspaper articles or speeches justifying the point of view of the organization paying for it. An editorial in a newspaper states its position. The reproduction of that editorial in the form of a pamphlet or a speech based on that pamphlet may state the position of the organization paying for it. Free discussion of political questions should be encouraged, not prohibited.

"Furthermore, the prohibition of an expenditure as distinguished from a contribution comes in an entirely different category from the prohibition of contributions in the meaning of the Corrupt Practices Act.

"While the above objections apply to a corporation, and a bank, and a labor organization, all three mentioned in the above recommendation, they are stronger when applied to a labor organization, because the latter is not a legal person like a corporation, but an aggregation of individuals like a church, or a fraternal organization, or a social group.

"It should be noted that the objection to the recommendation is confined to the *prohibition* of expenditures, not to the *publication* of them. Full and complete publicity of the latter should be exacted."

brought to bear on elections by labor organizations (pp. 2–4, 6, 8):

> Of all these organizations, the activities of the Congress of Industrial Organizations Political Action Committee have aroused the greatest public interest and controversy during 1944. The legal right of organizations in the labor movement to contribute directly or indirectly to the political campaigns of parties and candidates has been questioned. The legality of some $700,000 in contributions by the Congress of Industrial Organizations international unions to the Political Action Committee has likewise been questioned. Legal restrictions aside, controversy has centered on the particular form of participation in politics adopted by the Political Action Committee, and on the propriety as a matter of public policy of permitting labor organizations conceivably composed of members with divergent political views to participate in an organized way in support of one political party or slate of candidates in a campaign.
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> The scale of operation of some of these organizations is impressive. Without exception, they operate on a Nation-wide basis; and many of them have affiliated local organizations. One was found to have an annual budget for "educational" work approximating $1,500,000, and among other things regularly supplies over 500 radio

stations with "briefs for broadcasters." Another, with an annual budget of over $300,000 for political "education," has distributed some 80,000,000 pieces of literature, including a quarter million copies of one article. Another, representing an organized labor membership of 5,000,000, has raised $700,000 for its national organizations in union contributions for political "education" in a few months, and a great deal more has been raised for the same purpose and expended by its local organizations.

All of the organizations under investigation have certain factors in common. The recurring characteristics are: (1) Emphasis is placed on the dissemination of literature and propaganda through all available channels of communication—newspapers and periodicals, books and pamphlets, the radio, public meetings, and the mails; (2) their activities are financed in part by the sale of literature and subscriptions, in part by contributions, and in part by dues; (3) most of them operate continuously rather than merely during election campaigns; (4) their expenditures typically do not take the form of direct contributions to candidates or political committees; and (5) their advocacy is designed to inculcate broad sociopolitical attitudes which, while invariably identifiable as favorable to one set of candidates rather than the other in any given campaign, and understood as such by those

whose opinions are affected, nevertheless profess to be nonpartisan and in that sense non-political.

* * * * *

The finances of the Congress of Industrial Organizations Political Action Committee have come from the membership of the Congress of Industrial Organizations. At first the Political Action Committee national organization was financed by pledges from the international unions, aggregating a little under $700,000 and in some instances running as high as $100,000 each. Money paid on these pledges came from the various union treasuries, and as of July 23, 1944, there remained an unexpended balance of $300,127.55. Testimony shows a portion of these funds was spent in primaries. The fund was frozen as of that date in order, according to Mr. Hillman, to assure compliance with the strictest interpretation of the Corrupt Practices Act as amended by the Smith-Connally Act.

* * * * *

The activities carried on under each of the three Nation-wide forms of organization discussed above may be summarized as follows: (1) The Congress of Industrial Organizations Political Action Committee, during its preconvention phase and while operating on funds contributed by the international unions, as such, made contributions of money to candidates in their primary campaigns; and likewise carried on a

general educational program. The educational program included the distribution of literature bearing on the issues of the campaign and on the voting records of candidates; the endorsement of candidates for the Presidency and Vice Presidency by the national Political Action Committee, and the endorsement of congressional candidates and of candidates for local office by the State and local political action committees; radio programs; a campaign to induce people to register as voters; and the holding of meetings and sending out of speakers; (2) after the candidates had been nominated and up to the date of the general election, operating now on funds derived from the contribution program, the Political Action Committee continued to engage in the same range of educational activities, but refrained from making money contributions to candidates or to political committees; and (3) the National Citizens Political Action Committee, operating up to the date of the general election on funds derived from individual contributions not confined to labor circles, engaged in the same range of educational activities as the Political Action Committee, and in addition made money contributions to candidates in their campaigns for election.

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Contributions "in connection with any election" by a corporation or "labor or-

ganization" are prohibited under existing law. But here again we are dealing with a narrow and technically delimited prohibition.

The term "election," as employed in the Federal Corrupt Practices Act, does not include a primary election or the convention of a political party. And while neither a political committee nor a candidate may accept a corporate or labor organization contribution made in connection with an election, any organization other than one "which accepts contributions or makes expenditures for the purpose of influencing or attempting to influence the election of candidates" escapes the statutory classification of "political committee," and so is exempt from the prohibition.

This enabled the Political Action Committee to take the position that its initial pledges of approximately $700,000 from the Congress of Industrial Organizations international unions were in no sense in violation of the War Labor Disputes Act. For they were not made "in connection with any election." An election has been defined in the Corrupt Practices Act, and both Mr. Hillman's testimony and the records of the Political Action Committee indicate that this fund, used in primaries but frozen once the candidates were nominated, was in fact not used for contributions "in connection with any election."

Accordingly, the Committee recomended that the prohibition against contributions in connection with elections be extended to primaries (p. 9).

> It follows that the provisions of the Hatch Act and the Corrupt Practices Act limiting campaign expenditures and requiring the reporting of receipts and expenditures should be amended to cover activities, receipts, and expenditures in connection with primary campaigns and conventions as well as general elections. And all of the definitions now written into this legislation should, of course, be reviewed to this end.

Relative to extension of the prohibition to expenditures, it was stated (p. 11):

> It has been the contention of union groups that money expended by them for or against a political candidate or party and not given directly to candidates or political parties, is not a contribution as defined in the law but is an expenditure not restricted by law.
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> If such a distinction stands then national banks, corporations, and groups, as well as labor organizations, might avail themselves of this avenue to avoid the provisions of the existing law.
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> It is not the province of this committee to attempt to answer these questions here, but attention is directed to the facts developed by the hearings to which the proper legislative committees of the Congress

should give such consideration as they deem proper.

In 1946 further investigation of campaign expenditures by the CIO-PAC, A. F. of L., and numerous political committees and organizations was conducted by the House Special Committee on Campaign Expenditures, 1946. See House Report No. 2739, 79th Cong., 2d Sess. On the basis of this investigation, the Committee concluded that the limitation on contributions by corporations and labor organizations was rendered ineffective because of the widespread "expenditures" made by these organizations in behalf of a favored candidate. The Committee stated (pp. 39–40):

> The apparent purpose of the provisions of the act, limiting the amount of expenditures by candidates, appears to be defeated by the fact that there is no limit to the amount that a political committee or other organization may expend in behalf of a candidate. While the candidates have, to the greater part, limited their expenditures to the maximum allowed under the terms of the act, there is widespread activity by organizations functioning for the purpose of aiding and assisting in the election of candidates, in securing contributions and making expenditures in behalf of candidates, which expenditures are not included within the limitations which the candidates themselves may expend.

There is evidence before the committee that some organizations which are prohibited from making contributions in a political campaign have made expenditures and have engaged in activities the purpose of which were to endeavor to influence the election or defeat of candidates.

It is noted that the act prohibits contributions and does not expressly prohibit expenditures. It is reported to the committee that a former Attorney General had issued a ruling to the effect that the activities above mentioned do not constitute the making of contributions. It is conceivable that the word "contribution" might imply a giving on one hand and accepting on the other, yet from the study of the history of this provision of the act, the committee feels that the activities hereinabove referred to, which are carried on on an extensive scale, constitute violations of the spirit and intent of the act.

The intent and purpose of the provision of the act prohibiting any corporation or labor organization making any contribution in connection with any election would be wholly defeated if it were assumed that the term "making any contribution" related only to the donating of money directly to a candidate, and excluded the vast expenditures of money in the activities herein shown to be engaged in extensively. Of what avail would a law be to prohibit the contributing direct to a candidate and yet

permit the expenditure of large sums in his behalf?

The committee is firmly convinced, after a thorough study of the provisions of the act, the legislative history of the same, and the debates on the said provisions when it was pending before the House, that the act was intended to prohibit such expenditures.

The Committee also recommended that legislation be enacted making the restriction on contributions by labor organizations permanent and extending the restriction to include expenditures as well (pp. 45–46).

The Special Committee to Investigate Senatorial Campaign Expenditures, 1946, also considered these problems and in 1947 recommended that primaries and convention be included, that "contribution" and "expenditure" be redefined, and that "expenditures" as well as "contributions" be included in the ban (S. Report No. 1, Part 2, 80th Cong., 1st Sess., pp. 36–39). Relative to the extension of the restriction to include expenditures, the Committee stated (pp. 38–39):

Section 313 of the Federal Corrupt Practices Act of 1925 as amended applies only to "contributions." Experience has shown that some corporations and labor unions have spent money directly on behalf of a political party or candidate and that the applicability of the prohibition upon contributions has in consequence been denied. A redefinition of the terms "contribution"

and "expenditure" as recommended in 3 above, coupled with specific extension of the prohibition to include a prohibition upon "expenditures" will plug the existing loophole whereby corporations, national banks, and labor organizations are enabled to avoid the obviously intended restrictive policy of the statute by garbing their financial assistance in the form of an "expenditure" rather than a contribution.

It is clear, therefore, that prior to the hearings on the Taft-Hartley bills, Committees investigating campaign expenditures had reached recommendations to make all of the changes in Section 313 of the Federal Corrupt Practices Act which were effected by Section 304 of the Labor-Management Relations Act, 1947. As a result, very little material on Section 304 is found in the hearings on the Taft-Hartley bills.

The bill as introduced in the House, by Congressman Hartley, contained the restriction on contributions and expenditures substantially as it was finally enacted. H. R. 3020, Section 304. The Committee report accompanying the bill specified the proposed changes without explanation therefor[4] (House Report No. 245, 80th Congress,

[4] The minority report sharply criticizes Section 304 on the grounds that there was no clear showing of opportunity for corruption, corporations are not analogous to voluntary associations such as labor organizations, and enactment of this provision might constitute a precedent for prohibiting contributions by "in time all organizations, of whatever kind or nature." (House Report No. 245, p. 111.)

1st Session, p. 46), and the debates in the House prior to the initial passage of the bill gave little attention to this provision.[8] The bill as introduced in the Senate, by Senator Taft, S. 1126, did not contain any provision similar to the political contributions provision in the House Bill. However, the Senate and House conferees adopted the provision as passed by the House (House Report No. 510, 80th Congress, 1st Session, pp. 67–68). When the conference report was made to the Senate, lengthy debate on the political contributions provision ensued (93 Cong Rec. 6436–6441, 6445–6448, 6522–6524, 6530). The legislative reports and debates on this section of the Taft-Hartley Act are set forth in full in the separate appendix to this brief.

The hearings conducted by the special committees to investigate campaign expenditures, discussed *supra*, at pp. 27–40, had shown that the proscription against political contributions by labor organizations, enacted in the War Labor Disputes Act, had proved ineffective since labor organizations were able to give all desired support to candidates in the form of expenditures, and that in order to render the proscription effective it would be necessary to include "expendi-

[8] Congressman Hoffman referred to a threat by one union to use $4,000,000 to defeat Congressmen voting contrary to its interests. (93 Cong. Rec. 3428.) Congressman Miller made a lengthy argument in opposition to the provision on numerous grounds. (93 Cong. Rec. 3522–3523.) See also the statement by Congressman Pace (93 Cong. Rec. A–3640).

tures" in the ban. In the Senate debates this factor was emphasized as the primary basis for the amendment. Thus, Senator Taft stated (93 Cong. Rec. 6437, 6439):

> The Smith-Connally Act prohibited the making of contributions by unions to the PAC, yet those unions took the position that they could use their funds for the publication of pamphlets for or against candidates throughout that election, and they evaded the entire law by saying that was not a contribution—not even an indirect contribution—to the candidate who received the benefit of that procedure. That is what this provision of the House bill is intended to reach, if it be agreed to.
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> In this instance the words of the Smith-Connally Act have been somewhat changed in effect so as to plug up a loophole which obviously developed, and which, if the courts had permitted advantage to be taken of it, as a matter of fact, would absolutely have destroyed the prohibition against political advertising by corporations. If "contribution" does not mean "expenditure," then a candidate for office could have his corporation friends publish an advertisement for him in the newspapers every day for a month before election. I do not think the law contemplated such a thing, but it was claimed that it did, at least when it applied to labor organizations. So, all we are doing here is plugging up the hole

> which developed, following the recommendation by our own Elections Committee, in the Ellender bill.

See also 93 Cong. Rec. 6436, 6437, 6438, 6439.

Another reason for extending the prohibition against political contributions to include expenditures, as stated in the debates, was that union members who do not share the political views of the union should not be required to contribute to the support of a party, candidate or proposition which the union chooses to support but to which such union members are opposed (See 93 Cong. Rec. 6437). Thus Senator Taft stated (93 Cong. Rec. 6440):

> We will assume that 60 percent of a union's employees are for a Republican candidate and 40 percent are for a Democratic candidate. Does the Senator think the union members should be forced to contribute * * * to the election of someone whom they do not favor? * * * the prohibition is against labor unions using their members' dues for political purposes, which is exactly the same as the prohibition against a corporation using its stockholders' money for political purposes, and perhaps in violation of the wishes of many of its stockholders.

As previously stated, this was also one of the reasons for prohibiting, in the War Labor Disputes Act, contributions by labor organizations and for the recommendations by the committees

on elections that the proscription be extended to expenditures.

It was emphasized in the debates that the proscription against contributions and expenditures by labor organizations, and corporations as well, would apply only to union or corporate funds and was not intended to apply to voluntary contributions by union members or stockholders for political purposes. Accordingly, it was stated, labor organizations would be free to engage in full political activities, including expressions of political opinions in labor newspapers if the expenditures relating to these activities are made from voluntary contributions of the members. Thus, relative to labor newspapers supported by subscriptions or voluntary contributions, Senator Taft stated:

> If the paper called Labor is operated independently, if it derives its money from its subscribers, then of course there would be no violation [93 Cong. Rec. 6436].
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> * * * * *
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> If they [union members] are asked to contribute directly to the support of a newspaper or to the support of a labor political organization, they know what their money is to be used for and presumably approve it. From such contribution the organization can spend all the money it wants to with respect to such matters [93 C. R. 6440].
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> * * * * *

> I would say the word "expenditure" does not mean the sale of newspaper for money for their worth. If they are sold to subscribers and if the newspaper is supported by subscriptions, then I would not say that constituted such an expenditure [93 C. R. 6437].

Relative to activities of political committees of labor organizations financed by voluntary contributions of union members, Senator Taft stated (93 Cong. Rec. 6439–6440):

> If the labor people should desire to set up a political organization and obtain direct contributions for it, there would be nothing unlawful in that.
>
> * * * * * *
>
> A union can * * * organize something like the PAC, a political organization, and receive direct contributions, just so long as members of the union know what they are contributing to, and the dues which they pay into the union treasury are not used for such purpose.

The opinion was frequently expressed during the debates that labor organs financed by union funds—as distinguished from voluntary subscription payments or voluntary contributions—were prohibited by the statute from supporting a party or candidate. Thus, when asked whether a labor organ would be permitted under this bill to carry an endorsement of a candidate considered friendly

to labor, Senator Taft replied (93 Cong. Rec. 6436):

> If it were supported by union funds contributed by union members as union dues it would be a violation of the law * * * It is exactly as if a railroad * * * using its stockholders' funds, published such an advertisement in the newspaper supporting one candidate as against another.

Later, when asked whether the practice of printing special election editions of labor organs and distributing these free among the electorate would constitute a violation, Senator Taft replied (93 Cong. Rec. 6437):

> If they are sold to subscribers * * * I would not say that constituted such an expenditure. But if the newspapers were given away * * * I think that would violate the Corrupt Practices Act.

Other statements to the effect that corporate or union organs financed by corporation or union funds are prohibited from supporting one candidate or party against another appear at 93 Cong. Rec. 6436–6440.

During the Senate debates the view was also stated that ordinary newspapers acting in the regular course of their business, as distinguished from corporate house organs and labor union organs, were not affected by the ban against political expenditures; however, it was suggested that a regular newspaper might step out of character

and act in a manner constituting a violation.* In considering this point the following colloquy took place (93 Cong. Rec. 6436–6437):

> Mr. PEPPER. Does the Senator from Ohio mean to tell the Senate that a corporation owning a newspaper cannot have a free editorial policy to oppose candidates and to oppose political parties according to its own judgment?
>
> Mr. TAFT. Not if it used its corporate funds for that purpose, instead of running a newspaper as a business. * * *

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*The question as to whether Corrupt Practices legislation is applicable to ordinary newspapers acting in the regular course of their business received consideration in 1910 during the debates on a bill providing for the publicity of contributions or expenditures made for the purpose of influencing elections. (Act of June 25, 1910, 36 Stat. 822.) In this connection, Representative Gaines stated:

"Corporations are already forbidden to contribute to campaign funds. Most daily newspapers are published by corporations, yet that law does not prevent their legitimate political activity." 45 Cong. Rec. 4929.

"The criticism * * * that it will take cognizance of the business of newspapers in their ordinary business capacity is wholly without foundation. Most of the great dailies of this country are today corporations and are forbidden to contribute, and yet that law does not prevent these newspapers from advocating whatever party or whatever candidate they please. If they make campaign contributions or sell their influence, they should be as amenable to the law as anyone else." 45 Cong. Rec. 4936.

Other statements relative to this matter appear at 45 Cong. Rec. 4928–4929, 4934–4936, A–428.

Mr. BARKLEY. * * * Let us consider the publication of a corporation which, day after day, takes a position against one candidate and in favor of another candidate, and does so in its editorials. The editorials occupy space in that newspaper or publication, and the space costs a certain amount of money. Is that a direct or an indirect contribution to a campaign and if it is neither, what is it?

Mr. TAFT. I would say that is the operation of the newspaper itself.

* * * * *

Mr. TAFT. I do not think it is either a direct or an indirect contribution. I do not think it is an expenditure of the sort prohibited, because it seems to me it is simply the ordinary operation of the particular corporation's business.

Mr. BARKLEY. None of us have ever assumed that the Corrupt Practices Act prevented a newspaper from writing editorials for or against any candidate.

Mr. TAFT. That is correct.

Mr. BARKLEY. Yet the Senator from Ohio is saying that law is applicable to corporations, and is saying that that is a basis for doing the same thing with respect to labor organizations which may publish newspapers.

Mr. TAFT. It never has been applied to newspapers. * * *

* * * * *

Mr. BALL. Two years ago, I was a member of the committee which was headed by

the Senator from Rhode Island [Mr. Green], as I recall. We ran into expenses on the part of corporations, as well as unions, in cases in which by making direct expenditures, as well as contributions, they certainly violated the spirit and intent of the Corrupt Practices Act. I know of one newspaper in my section of the country which makes a practice of printing hundreds of thousands of special reprints and sending them into various States, to influence the elections. I think that is prohibited, just as the practice of the labor paper to which the Senator from Florida has referred—the sending of a special edition of 200,000 or more copies into a State—would also be prohibited.

Mr. TAFT. I would say the word "expenditure" does not mean the sale of newspaper for money for their worth. If they are sold to subscribers and if the newspaper is supported by subscriptions, then I would not say that constituted such an expenditure. But if the newspapers were given away—even an ordinary newspaper—I think that would violate the Corrupt Practices Act. * * *

The opinion was expressed that the act was not intended to prevent the dissemination in corporation house organs or labor organs of factual information regarding candidates and issues so long as this was not colored in any way. Thus, Senator Ball stated (93 Cong. Rec. 6447):

> I do not think there is a single thing in the bill which prohibits any union or corporation or anyone else from printing any public official's voting record. That is not a campaign for or against a candidate. It is simply the printing of public information.

Senator Taft agreed with this view (93 Cong. Rec. 6447):

> I think it would depend upon all the circumstances in the case. If it was merely a bare statement of actual facts and simply direct quotations of what the man had said in the course of certain speeches on certain subjects, and was not colored in any way, I would rather agree with the Senator from Minnesota. But I think it would depend, in each case, on the character of the publication.

Previously Senator Taft had taken a contrary position (93 Cong. Rec. 6438).

The opinion was expressed that corporate house organs are limited to the same extent that labor organs are limited (93 Cong. Rec. 6440):

> Mr. MAGNUSON. * * * They [labor groups] publish so-called labor organs, and a part of a member's dues goes to subscribe for the labor organ. If such an organ were not published the member's dues would be correspondingly less. * * * But now unions collect the subscription along with the dues.

> Mr. TAFT. The case is the same as the case of a corporation house organ. A corporation house organ is published and sent out to employees, sometimes many thousands of them. A corporation which used such a house organ to try to elect or defeat a political candidate would certainly be violating the law, in my opinion. Such a law has been in existence for 25 years. What we are now doing is to write into the law the same prohibition with respect to labor organizations as now exist with respect to corporations.

Similar statements regarding house organs appear at 93 C. R. 6437, 6438 and 6439.

It was stated during the debates that such business associations as the National Association of Manufacturers and the United States Chamber of Commerce, even if not corporations themselves, are prohibited by the Act from expending moneys for political purposes if such moneys were contributed to them by corporations. Relative to this matter, Senator Taft stated (93 Cong. Rec. 6439):

> Such an association receiving corporation funds and using them in an election would violate the law, in my opinion, exactly as the PAC, if it got its fund from labor unions, would violate the law. If the labor people should desire to set up a political organization and obtain direct contributions for it, there would be nothing unlawful in that. If the National Associ-

> ation of Manufacturers, we will say, wanted to obtain individual contributions for a series of advertisements, and if it, itself, were not a corporation, then, just as in the case of PAC, it could take an active part in a political campaign. But the prohibition is against a labor organization or a corporation participating in an election either by a contribution to somebody else or by direct expenditure of its own funds. That has been understood to be the law of corporations for many years, and until labor organizations were placed under the terms of the Smith-Connally Act, no one supposed that corporations could make direct expenditures without it being considered a contribution. But after the labor organizations were included, that question was raised. In order that it might be finally resolved in this bill, we made it perfectly clear that it covers either a contribution to somebody else or an expenditure of one's own funds for the same purpose, in connection with an election.

Other similar statements appear at 93 Cong. Rec. 6438, 6447.

The limitation on expenditures was said to apply to use of the radio for political purposes to the same extent that it applied to newspapers for that purpose (93 Cong. Rec. 6439–6440):

> Mr. PEPPER. * * * Suppose that in the 1948 campaign, Mr. William Green, as president of the American Federation of

> Labor, should believe it to be in the interest of his membership to go on the radio and support one party or the other in the national election, and should use American Federation of Labor funds to pay for the radio time. Would that be an expenditure which is forbidden to a labor organization under the statute?
>
> Mr. TAFT. Yes.
>
> * * * * *
>
> Mr. TAFT. * * * Of course, in each case there is a question of fact to be decided. I cannot answer various hypotheses without knowing all the circumstances. But in each case the question is whether or not a union or corporation is making a contribution or expenditure of funds to elect A as against B. Labor unions are supposed to keep out of politics in the same way that corporations are supposed to keep out of politics.

Other statements in the debates relative to this matter appear at 93 Cong. Rec. 6447, 6523 and 7389.

The question as to whether statements over the radio by news commentators, whose time on the radio is paid for by corporations in connection with advertisement of the corporation's product, which should be intended to influence the outcome of an election comes within the scope of the law was said to constitute a question of fact in each case. 93 Cong. Rec. 6439, 6440, 6447.

Opponents of the bill based their objections on the grounds that labor organizations are not anal-

ogous to corporations for purposes of political activities (93 Cong. Rec. 6447, 6448, 6522), that the proscription of political expenditures violates the First Amendment (93 Cong. Rec. 6436, 6448, 6523, 6530), that corporations may control regular newspapers through advertising (93 Cong. Rec. 6448), that other unincorporated associations are not included within the ban (93 Cong. Rec. 6448), and in general that the purpose of the bill was to deprive labor of a means of political expression and one of the major parties of a principal source of strength (93 Cong. Rec. 6522–6524).

President Truman's message vetoing the Taft-Hartley bill contained the following statement relative to the political contributions and expenditures provisions (House Doc. 334, 80th Cong., pp. 9–10):

> (1) In undertaking to restrict political contributions and expenditures, the bill would prohibit many legitimate activities on the part of the unions and corporations. This provision would prevent the ordinary union newspaper from commenting favorably or unfavorably upon candidates of issues in national elections. I regard this as a dangerous intrusion on free speech, unwarranted by any demonstration of need, and quite foreign to the stated purposes of this bill.
>
> Furthermore, this provision can be interpreted as going far beyond its apparent

objectives, and as interfering with necessary business activities. It provides no exemption for corporations whose business is the publication of newspapers or the operation of radio stations. It makes no distinctions between expenditures made by such corporations for the purpose of influencing the results of an election, and other expenditures made by them in the normal course of their business "in connection with" an election. Thus it would raise a host of troublesome questions concerning the legality of many practices ordinarily engaged in by newspapers and radio stations.

After further debate, the bill passed over the President's veto.[1]

F. *The conclusions to be drawn from the legislative history*

The legislative history of Section 304 thus justifies these conclusions:

A. During the forty years prior to its enactment, Congress has continuously regarded the direct impact of corporate funds in the form of contributions to candidates as inconsistent with honest elections, and has therefore interdicted them. The reasons for the prohibition are:

(1) A distrust of the use of large contributions, not because these prove corruption, but because

[1] For the further debate on this provision in the House, see 93 Cong. Rec. 7492; and in the Senate, see 93 Cong. Rec. 7372–7373, 7376–7377, 7389–7390, 7452, 7526.

the large single contributions imply resulting obligations and, therefore, can breed corruption;

(2) A distrust of corporate contributions, large or small, for the reason that they are an *ultra vires* use of corporate funds and presumptively a fraud upon all shareholders who do not participate in the actual control of the donor.

B. During the four years prior to its enactment, Congress prohibited contributions by labor organizations to federal candidates because

(1) The reasons which create distrust of the play of large contributions are equally applicable to any powerful aggregate, be it on either side of the industrial fence;

(2) The use of such funds for the purpose of affecting the outcome of an election must result in the application of the value of these funds in a manner possibly offensive or even hostile, to the political purposes of some of the individual members of the donor.

C. The prohibition against contributions proved ineffective against the use of labor organization funds to affect the outcome of federal elections. During the effective period of the Smith-Connally Act, labor organizations exercised the right to make contributions to shape the results of primary contests. Moreover, experience showed that their literal obedience to the prohibition against contributions to candidates did not prevent them from spending substantial sums to support fa-

vored candidates in the preelection campaigns. Experience proved too, that there is no practical difference between a contribution and an expenditure so far as the effect of the use of money for campaign purposes is concerned. The money has the same practical value and importance and effect whether given to the candidate to be used by him, or whether used directly by the owner for the benefit of the candidate. In the first of these instances, there is a contribution, in the second an expenditure. Because the law prohibited only a contribution, the prohibition of the law was ineffective. It was for this reason that the language of the statute was expanded to prohibit expenditures by corporations and labor organizations in federal political contests.

D. In adopting Section 304 Congress acted with knowledge of the use of labor newspapers and corporate "house organs" in the political contests. The statute applies to such of these as are subsidized by organization funds. All organization expenditures to affect the outcome of federal political contests are prohibited, including expenditures for the publication and distribution of these journals.

E. Congress was aware that the limitation of expenditures in this field projected a problem under the First Amendment. But it determined that its action was necessary to protect the purity of the election process. The enactment is the re-

sult of a reasoned treatment of the constitutional problem rather than a congressional determination to disregard the constitutional problem. It represents an effort to preserve the two constitutional objectives of free expression and honest elections. In the process of accommodating each of these to the other, Congress determined that it was necessary to place restraints on the use of industrial organization funds in the arena of political discussion during the political campaigns. The restraint is limited to the use of the funds of the industrial organization. No restraint is imposed on any individual investor or labor union member, nor does the statute limit group action by investors or union members. The statute was designed to prevent involuntary group political action while preserving every aspect of political self-expression for every group voluntarily formed for that purpose. Congress has not destroyed a constitutional freedom in order to cure an abuse of that freedom. No man was intended to be silenced by the prohibition of this statute, no group of men voluntarily formed for political self-expression to be gagged. But existing economic units, created for economic objectives, may not, under the terms of this statute, profess to speak for all their investors or members when the fact is that such profession of unanimity can be false, and the ability to make the profession can be the result of economic fraud in the case of a corporation or economic duress in the case of a

labor organization. The statute ends that abuse at the same time that it preserves unlimited freedom of expression for every individual and group of individuals. It requires only that the character of the formation of the group be demonstrative of the fact that the funds it uses in political contests were given by its contributors voluntarily for a political purpose. In the view of the Congress, this statute assures that what purports to be free speech shall actually represent the attitude of those whose money is spent in communicating that speech.

II

SECTION 304 IS AN EXERCISE OF THE CONGRESSIONAL POWER TO CONTROL FREE ELECTIONS WHICH DOES NOT UNDULY IMPAIR CONSTITUTIONAL RIGHTS.

A. *Section 304 is designed to prevent the exercise of a disproportionate influence on elections by those who control the funds of entities composed of members of different political views*

The legislative history detailed above makes clear the objective which Congress had in mind in the enactment of Section 304 of the Labor Management Relations Act. Congress has found that certain legal entities—corporation and labor organizations—organized primarily for purposes not directly political in nature, composed of individuals who do not necessarily have the same political views, have, as entities distinct from the

individual members, acquired such power arising from combination that they are in a position to exercise a disproportionate influence on federal elections. It has sought to prevent abuse of such power by prohibiting money collected from all the members for the purpose for which the organization was originally formed from being expended for a different purpose, i. e., the influencing of federal elections.

It cannot be overemphasized that the legislation here involved covers only entities, and not individual citizens. No individual is deprived of his right to spend his money, express his opinion or publish his views on federal elections. No individual is deprived of the right to combine with others of like persuasion into an association by which they can aggregate their funds and spend them in an attempt to persuade their fellow citizens to vote in accordance with their ideas. This legislation affects only legal entities which, as entities, have no right to vote and which are not necessarily composed of persons of the same political persuasion. All that this legislation does is to bar the expenditure of the funds of such an entity for a purpose which does not necessarily represent the views of all the persons from whom those funds were obtained. And to make certain that the pressure of the entity shall not be used to coerce the individual members thereof, Congress has in effect required that the voluntary

association by the individuals be something separate and apart from the entity itself.

The fundamental basis of this legislation is made graphic by some simple arithmetical illustrations. A corporation which has issued a thousand shares may have one stockholder holding 300 shares, another 250 shares, and 10 others holding 45 shares each. In all, therefore, 12 voters would compose the corporation. Yet, in the management of the corporate affairs, the two major stockholders could dominate the policies of the corporation and control its funds. If the corporation were allowed to expend corporate funds in political activities, two men could exercise the power of 12 in influencing an election; two men could exercise the power of 12 possibly against the wishes of 10.

The situation is not essentially different as to labor organizations. We may assume that labor organizations operate by majority rule and that each member has an equal vote in the organization. It would still be true that a bare majority, 51, could control the policies and funds of 100, and thus 51 individuals would be acting with the force and the funds, not of 51, but of 100.

While the use of group funds for a purpose opposed by a minority does not necessarily result in fraud upon the dissidents, its use does translate the energy of that money into action which is inimical to the democratic process. The result

is to thrust the value of the dissidents' funds into the electoral process in a direction to which the dissidents are opposed.

The basic question therefore is whether, in the interests of free elections, Congress has a right to say that a minority or even majority of an organization composed of individuals of different political views, may not exercise the whole combined power of the organization in support of the views of the part which controls the organization. We submit that this is a proper field for congressional action and that in this statute Congress has gone no further than was necessary to achieve the result it could properly seek to accomplish.

B. *Congress has power to act to preserve the purity of federal elections*

There can be no question that Congress has an interest in preserving the purity of federal elections and has the power to act for such purpose.

The power of Congress to enact laws regulating the conduct and holding of federal elections stems from Article I, Section 4, of the United States Constitution, which provides:

> The Times, Places and Manner of holding Elections for Senators and Representatives, shall be prescribed in each State by the Legislature thereof; but the Congress may at any time by Law make or alter such Regulations, except as to the Places of choosing Senators.

Article I, Section 2, Clause 1, provides that "The House of Representatives shall be composed of Members chosen every second Year by the People of the several States, and the Electors in each State shall have the Qualifications requisite for Electors of the most numerous Branch of the State Legislature."

Article I, Section 8, Clause 18, confers upon Congress the power "to make all Laws which shall be necessary and proper for carrying into Execution the foregoing Powers, and all other Powers vested by this Constitution in the Government of the United States."

This Court has frequently held that this constitutional grant of power over elections is not limited merely to regulating the taking of the vote in federal elections. Congress may act to surround the entire election process with such rules and requirements as it deems necessary and advisable to insure fair and honest elections. *Ex parte Yarbrough,* 110 U. S. 651, 666–667; *United States* v. *Gradwell,* 243 U. S. 476, 482; *Burroughs and Cannon* v. *United States,* 290 U. S. 534, 544–545; *Smiley* v. *Holm,* 285 U. S. 355, 366; United *States* v. *Classic,* 313 U. S. 299, 320. As this Court said long ago in *Ex parte Yarbrough,* 110 U. S. 651, 657–658:

> That a government whose essential character is republican, whose executive head and legislative body are both elective, whose most numerous and powerful branch of the

legislature is elected by the people directly, has no power by appropriate laws to secure this election from the influence of violence, of corruption, and of fraud, is a proposition so startling as to arrest attention and demand the gravest consideration.

If this government is anything more than a mere aggregation of delegated agents of other States and governments, each of which is superior to the general government, it must have the power to protect the elections on which its existence depends. * * *

If it has not this power it is left helpless before the two great natural and historical enemies of all republics, open violence and insidious corruption.

* * * * *

In a republican government, like ours, where political power is reposed in representatives of the entire body of the people, chosen at short intervals by popular elections, the temptations to control these elections * * * is a constant source of danger.

* * * * *

If the recurrence of such acts as these prisoners stand convicted of are too common in one quarter of the country, and give omen of danger from lawless violence, the free use of money in elections, arising from the vast growth of recent wealth in other quarters, presents equal cause for anxiety.

If the government of the United States

has within its constitutional domain no authority to provide against evils, if the very sources of power may be poisoned by corruption or controlled * * * without legal restraint, then, indeed, is the country in danger, and its best powers, its highest purposes, the hopes which it inspires, and the love which enshrines it, are at the mercy of the combinations of those who respect no right but brute force, on the one hand, and unprincipled corruptionists on the other.

For many years and in various ways Congress has exercised its right to concern itself with election abuses and place controls surrounding them. The Federal Corrupt Practices Act and many provisions of the so-called Hatch Act are testimonials to the interest felt by Congress in the need to see that no one group could exercise political influence out of fair proportions. Throughout the life of the Republic there has existed an understandable fear of bigness, whether in our economic system or in political affairs. As times and conditions have changed, much has been regulated.

Thus political committees operating in two or more states are answerable to Congress for information on how their money was collected and by what means it was spent. 2 U. S. C. 242, 243, and 244.

Any person who makes an expenditure in excess of $50 to influence the outcome of a federal political campaign in two or more states must report

to Congress on how and for whom such expenditures were made. 2 U. S. C. 245.

Every candidate for the Senate or the House of Representatives must file with Congress an itemized statement setting out from whom he received contributions and how much money was spent. 2 U. S. C. 246.

Congressional and Senatorial candidates are limited in the amount of money which they can spend in the course of the campaign. 2 U. S. C. 248.

No candidate for federal office may promise an appointment or the use of his influence in order to secure the support of a voter. 2 U. S. C. 249. No person may offer to make an expenditure or give anything else of value to another person in order to induce him to vote or withhold his vote or to vote for or against a candidate for federal office. 2 U. S. C. 250.

Congress has seen fit to place a ban on political activities by federal employees. 18 U. S. C., Supp. V, 61h.

No person may make a contribution or give anything of value in excess of $5,000 during any calendar year in connection with any campaign or to any candidate for federal political office. 18 U. S. C. 61m.

It has also been declared a pernicious political activity by Congress for any person, unincorporated association, corporation or group to pur-

chase any goods or other things of value where the proceeds of such a purchase may inure to the benefit of any candidate for an elective federal office. 18 U. S. C. 61m (c).

No person or firm negotiating or performing under a contract with the United States may make a contribution or promise anything else of value to any political party or candidate for federal office; nor may any person or firm be so solicited for such a contribution. 18 U. S. C. 61m–1.

A limit has been placed by Congress ($3,000,000 in a calendar year), on the amount a political committee operating in two or more states may receive or expend to further candidacy for federal political office. 18 U. S. C. 61t. This ceiling was placed on contributions to and expenditures by political committees in 1940, notwithstanding the fact that Congress had already provided in 1925 that all such political committees must report in detail on how and from whom their contributions were received, and in what manner and to whom such expenditures were made. 2 U. S. C. 242.

More recently, Congress has provided that no person, association, corporation or organization whatever may publish or circulate any printed or photographic matter in connection with any federal political campaign unless the paper or material so circulated contained the names of the persons or the names of the officers of the

organization responsible for the publication. 18 U. S. C., Supp. V, 62, enacted December 23, 1944.

Throughout this legislation is apparent the basic concept that, while money is necessary to the conduct of an election, money represents power unduly to influence an election, power which must be regulated and curbed if elections are to be truly free.

C. *Section 304 is an exercise of the power of Congress to regulate federal elections*

One aspect of the congressional control of that power of money is the legislation here involved. As noted in Point I, as early as 1907, the tremendous power represented by aggregation of wealth in the hands of corporations was recognized as danger to free elections and a law was enacted prohibiting corporations in their capacity as an entity from making contributions toward federal elections. The constitutionality of that section and of similar state statutes has been unquestioned for years. There is, in fact, only one reported decision in which the issue of constitutionality was directly raised and that decision upheld the statute. *United States* v. *United States Brewers' Assn,* 239 Fed. 163 (W. D. Pa.), decided in 1916. The court had before it an indictment of the defendant corporation for having made a "money contribution" in connection with an election at which a Representative to Congress was to be voted for, in violation of Section 83 of the Criminal Code. The defendant filed motions to

quash which challenged the constitutionality of the statute on a number of grounds. One of the reasons assigned was that this statute violated the First Amendment in that it attempted to prohibit and make criminal and punish the freedom of speech and of the press in the discussion of candidates and of political questions involved in such elections.

The court held (239 Fed. at 169) "The section itself neither prevents, nor purports to prohibit, the freedom of speech or of the press. Its purpose is to guard elections from corruption, and the electorate from corrupting influence in arriving at their choice." The motion was denied, as well as other motions upon different grounds, and the defendant corporation thereafter entered a plea of guilty. Thus, there was no occasion for a review of the decision by a higher court.

Similarly, statutes prohibiting government employees or members of Congress from soliciting or receiving money from federal employees have been held not to infringe the constitutional rights of such workers. *Ex parte Curtis*, 106 U. S. 371, 373; *United States* v. *Wurzbach*, 280 U. S. 396. As this Court recently noted in *United Public Workers* v. *Mitchell*, 330 U. S. 75, 98, the argument that a statute prohibiting political contributions by federal employees to members of Congress constituted an unconstitutional infringement upon the political rights of a citizen was, by the time of the *Wurzbach* case "dismissed in a sentence."

Thus, in substance, this Court has held that the right to give money to a political candidate is not a constitutionally protected right.

In the years from 1907 to 1943, labor organizations greatly increased in number, in membership, and in power. In 1943, Congress found that the dangers to free elections which it had previously noted in the aggregation of wealth in the hands of corporations were arising because of the aggregation of wealth in the hands of labor unions. It found that this aggregate wealth was being used by those in control of the organization to influence elections and thus was giving the group in control of such aggregate funds a disproportionate influence in the conduct of national elections. It therefore, by the War Labor Disputes Act, extended to labor unions the prohibitions theretofore imposed against corporations against allowing funds of the entity to be used for political contributions relating to federal elections.

We submit that the reasoning which supports the ban on contributions by corporations supports the ban on contributions by labor unions. It is, of course, true that labor organizations are for the most part unincorporated associations and thus for many purposes may have a different status from that of a corporation. But a labor organization is not in a different status from a corporation in relation to the particular power with which Congress is here dealing, the power to

maintain free elections. A labor organization is unquestionably a legal entity and not an individual, for certain purposes. *United States* v. *White,* 322 U. S. 694, 698, 704. It is certainly an entity and not an individual in relation to the election process. As an organization, it has no vote, just as a corporation has no vote. As an entity, it controls funds contributed by many persons, just as a corporation does. As an entity, it embraces many persons who may be, and often are, of different political beliefs. Thus, in relation to the election process and the danger it represents to the election process, a labor organization can be in the same position as a corporation. Congress, when it prohibited political contributions by a labor organization, found that it did represent the same danger to the election process, and imposed against labor organizations the same prohibition against expenditure of the funds of the entity which it had previously imposed against corporations. Since, as the cases cited above demonstrate, a ban on contributions involves no element of limitation on a constitutional right, the legislative judgment as to the necessity for banning contributions is essentially a matter in which the legislative judgment is final. See *American Federation of Labor* v. *Mann,* 188 S. W. 2d 276 (Tex. 1945), where the court upheld the validity of a state statute prohibiting financial contributions by labor unions.

D. *Only the ban against expenditures raises any problem of conflict with the First Amendment*

In the years from 1945 to 1947, Congress found that its policy as expressed in the War Labor Disputes Act was being evaded; that the aggregate funds of labor organisations, collected from persons of different political beliefs, were being used in large amounts to influence national elections. It found that this was being done, not directly in the form of contributions by the organizations to the candidate or party whom they favored, but indirectly in the expenditure of the funds of the entity in direct political activities on behalf of the candidates favored by those who controlled the funds (see Point I, *supra,* pp. 27–40). Section 304 of the Labor Management Relations Act was thus designed to plug a loophole which Congress had found in the former act, and to prevent labor organizations from doing indirectly that which they could not do directly.

The purpose of this legislation is thus the same as that which motivated the ban against contributions, first by corporations, and then by labor organizations. The purpose is to keep the aggregate wealth of an entity, collected from persons of different political beliefs, from being used by the group in control of that aggregate wealth to exert a disproportionate influence in favor of particular candidates. Basically, therefore, the justification for the prohibition against expendi-

tures is the same as the justification for the prohibition against contributions. Judged in relation to the power of Congress to maintain free elections for federal office, the ban on expenditure is as valid as the ban on contributions. If the contribution by an entity of funds in support of a candidate is a danger to free elections which Congress has the right to control, the expenditure of funds by the same entity for the same purpose, the indirect accomplishment of the same effect, should also be a matter which Congress has a right to control.

The constitutional problem in regard to the ban against expenditures arises because, at this point, and only at this point, another constitutional right comes into play, the right to free expression of opinion guaranteed by the First Amendment. A prohibition against handing over money to a candidate in order to enable him to express his opinions to influence the voters does not prevent the organization from expressing its own opinions for or against a candidate, or for or against the political issues involved in a particular campaign. But to the extent that a prohibition against expenditures for political purposes limits expression of opinion, there does arise the question of balancing the power of Congress to maintain free elections against the constitutional prohibition against the enactment of legislation abridging freedom of speech, press, assembly, and the right

to petition for redress of grievances.* See *United Public Workers* v. *Mitchell*, 330 U. S. 75, 95–96, where this Court said:

> * * * The essential rights of the First Amendment in some instances are subject to the elemental need for order without which the guarantees of civil rights to others would be a mockery. The powers granted by the Constitution to the Federal Government are subtracted from the totality of sovereignty originaly in the states and the people. Therefore, when objection is made that the exercise of a federal power infringes upon rights reserved by the Ninth and Tenth Amendments, the inquiry must be directed toward the granted power under which the action of the Union was taken. If granted power is found, necessarily the objection of invasion of those rights, reserved by the Ninth and Tenth Amendments, must fail. Again this Court must balance the extent of the guarantees of freedom against a congressional enactment to protect a democratic society against the supposed evil of political partisanship by classified employees of government.

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* The opinion of the district court states (R. 15) that the Government conceded that "rights guaranteed by the First Amendment are abridged" by the statute. The Government conceded in the district court no more than is conceded here, that the ban against expenditures did bring the First Amendment into play. Our position below, as here, was that the limitations imposed by the statute are reasonable limitations which do not violate the First Amendment.

E. *Congress has determined that political expenditures by entities represent a clear and present danger to free elections*

We start with the premise, clearly articulated, in the *Mitchell* case, *supra*, that First Amendment rights are not absolute but must at times give way to the interest of the state in preserving free government. See also *Whitney* v. *California*, 274 U. S. 357, 371; *Frohwerk* v. *United States*, 249 U. S. 204, 206. Congress has determined that as to entities, corporations and labor organizations, organized primarily for nonpolitical purposes, enforced neutrality in political campaigns is necessary if voters and candidates are to be free from the undue influence which can be exerted by persons in control of the aggregate wealth of such entities. The Government asserts that the limitation upon expression of opinion imposed by this statute is upon the abuse rather than upon the freedom, that the determination as to the need for this limitation upon the abuse was peculiarly within the competence of the Congress, that the statute is therefore constitutional.

As the legislative history set forth in point I shows, Congress was well aware of the necessity of balancing the guarantees of the First Amendment against its duty to keep the election process free and untrammeled. The possibility that the prohibition against expenditures designed to influence federal elections would involve impair-

ment of First Amendment rights was considered and debated. Yet, by an overwhelming majority, Congress passed Section 304 of the Taft-Hartley Act. The enactment of that legislation thus represents a deliberate legislative judgment that the danger to free elections arising from the use of the aggregate wealth of the entities covered by the act, by the persons in control thereof, to exercise a disproportionate influence on elections, was sufficiently great to necessitate the incidental impairment of First Amendment rights which might result therefrom. The question before this Court, as we view it, therefore, is whether the court in the exercise of its power to interpret the Constitution, has the right to upset the legislative judgment in that respect.

That, we submit, is the question, whatever legal formula may be used to discuss it. It is significant that, in the case most analogous to this, that relating to restrictions on political activities by government employees, *United Public Workers v. Mitchell*, 330 U. S. 75, the majority opinion of this Court does not speak in terms of the "clear and present" danger test. As noted above, it talks in terms of balancing constitutional rights. This Court further said (p. 102):

> We have said that Congress may regulate the political conduct of government employees "within reasonable limits," even though the regulation trenches to some extent upon unfettered political action. The

> determination of the extent to which political activities of governmental employees shall be regulated lies primarily with Congress. Courts will interfere only when such regulation passes beyond the generally existing conception of governmental power. That conception develops from practice, history, and changing educational, social and economic conditions. The regulation of such activities as Poole carried on has the approval of long practice by the Commission, court decisions upon similar problems and a large body of informed public opinion. Congress and the administrative agencies have authority over the discipline and efficiency of the public service. When actions of civil servants in the judgment of Congress menace the integrity and the competency of the service, legislation to forestall such danger and adequate to maintain its usefulness is required. The Hatch Act is the answer of Congress to this need. We cannot say with such a background that these restrictions are unconstitutional.

This opinion suggests that, in the realm of the congressional power over elections, a power basic to democratic government, "clear and present danger" is not the measure of congressional power; that Congress is free to act up to the point where such regulation "passes beyond the generally existing conception of governmental power," as that conception develops "from practice, history, and changing educational, social and economic conditions."

The problem is not essentially different if we accept the standard laid down in recent decisions of this Court dealing with other phases of free speech problems that "any attempt to restrict those liberties [guaranteed by the First Amendment] must be justified by clear public interest, threatened not doubtfully or remotely, but by clear and present danger." *Thomas* v. *Collins*, 323 U. S. 516, 530. Or, as this Court said in *Board of Education* v. *Barnette*, 319 U. S. 624, 639, First Amendment rights "are susceptible of restriction only to prevent grave and immediate danger to interests which the State may lawfully protect."

The fact is that, by passing this legislation, Congress has determined that the use of the aggregate wealth of entities, by persons in control thereof for political purposes which may not necessarily accord with the views of those who contributed to that aggregate wealth, is a clear and present danger to free federal elections. Thus, accepting the clear and present danger test, the question still remains whether the court may substitute its judgment for that of Congress and say that the activities here prohibited are not a clear and present danger to free elections.

F. *Congress had a reasonable basis for concluding that the conduct prohibited by this legislation constituted a clear and present danger to free elections*

This Court has indicated that, in this domain,

where fundamental constitutional rights are involved, it will not consider itself bound absolutely by the legislative judgment as to the necessity for restriction. *Thomas* v. *Collins,* 323 U. S. 516, 531; *Board of Education* v. *Barnette,* 319 U. S. 624, 639; *Thornhill* v. *Alabama,* 310 U. S. 88, 96; *Schneider* v. *State,* 308 U. S. 147, 161; *Herndon* v. *Lowry,* 301 U. S. 242, 258. See also *Craig* v. *Harney,* 331 U. S. 367, 373; *Pennekamp* v. *Florida,* 328 U. S. 331, 335.

But we do not understand this Court to have held that, where a legislature may reasonably conclude that the conduct which it seeks to prevent is a clear and present danger to an interest which it has a right to protect, the court can substitute its judgment for that of the legislature. To the contrary, it has stated that when a statute comes before it cloaked in the armor of a legislative finding, that legislative determination is entitled to great weight. *Cantwell* v. *Connecticut,* 310 U. S. 296, 307–308; *Whitney* v. *California,* 274 U. S. 357, 371; *Gitlow* v. *New York,* 268 U. S. 652, 668. See *United Public Workers* v. *Mitchell,* 330 U. S. 75, 102.

None of the cases dealing with impairment of the rights of free speech reach the precise point at issue here. They suggest only the guide posts used by this Court in determining whether a legislature has exceeded constitutional bounds. The factors to be considered are the nature of the right protected, the extent to which rights guaranteed

by the First Amendment are impaired, the seriousness and the imminence of the danger to the right which is protected. *Thomas* v. *Collins,* 323 U. S. 516, 530; *Bridges* v. *California,* 314 U. S. 252, 261–263.

1. *The right protected is basic to democratic government.*—As we have shown, there is no question that the right to preserve free elections is a right which Congress may act to preserve. It is, in fact, a right as basic to the preservation of democratic government as the First Amendment rights themselves. Hence, those cases in which the interest to be protected has been found insubstantial in relation to the restraint imposed have no application here. E. g., *Thomas* v. *Collins,* 323 U. S. 516, 536; *Board of Education* v. *Barnette,* 319 U. S. 624, 639; *Schneider* v. *State,* 308 U. S. 147, 163. Whether one talks in terms of balance of constitutional rights or clear and present danger, the significant fact is that the right sought to be protected is as fundamental as the rights infringed.

2. *The restraints imposed are limited.*—On the other hand, the restraints imposed by this statute are of a limited character. As noted above, no individuals are affected thereby; only the activities of legal entities are curtailed, and those are curtailed only to the extent that they are designed to influence national elections. Even the legal entity is barred in this respect, only to the extent that it uses, to express its organizational views on

politics, funds paid to the organization, not primarily and not specifically for political purposes, paid by persons who do not necessarily have the same political views as those who dominate the organization. Nothing in the statute bars members of a labor organization from aggregating funds voluntarily contributed by members having the same point of view, and using that money to express labor's view in support of candidates and issues. Nothing in the statute bars corporate stockholders from combining together and expressing capital's point of view. This legislation in essence, merely provides that persons who join a labor organization for the primary purpose of bettering the conditions of employment, or who buy corporate stock for the primary purpose of making money, cannot be required *ipso facto* to support political views which they may or may not share. The fallacy of the reasoning in *Bowe* v. *Secretary of the Commonwealth*, 320 Mass. 230 (1946), is that the decision assumes, contrary to the fact, that the statute would destroy completely political activity by unions. The British experience, discussed *infra*, is to the contrary.

This is not a broad general statute, vague in outline and unlimited in scope. It has none of the generality found to be an evil in the statutes involved in such cases as *Stromberg* v. *California*, 283 U. S. 359, 369, and *Herndon* v. *Lowry*, 301 U. S. 242, 256–258. It is a specific statute, directed to a particular evil, designed to prevent

evasion of a restriction which, as we have shown, Congress clearly had the right to impose. We discuss the question of definiteness in more detail in Point III, *infra.*

3. *The danger to free elections is real.*—It certainly cannot be said that no real danger to free elections can arise from the untrammeled expenditure of funds by corporations and labor organizations. As the legislative history summarized in Point I shows, the danger was found by Congress, on the basis of the facts before it, to be substantial and real, both in respect to the disproportionate influence of the power arising from combination, and in respect of the power of minorities or bare majorities of an organization to exercise the entire political weight of the organization. The danger of evasion by unions of the ban against political contributions by direct expenditures by the unions themselves was found to exist on the basis of investigation of practical experience in the conduct of elections.

It is interesting to note that as early as 1939, when political activities by labor unions had not yet reached the proportions attained in 1940 and 1944, a leading authority on the subject of campaign contributions was predicting that the emergence of union power in this field would result in demand for regulation. Overacker, *Labor's Political Contributions,* 54 Political Science Quarterly 56, 61 (1939). In that same article it was pointed out that "An examination of the constitu-

tions of ten typical organizations revealed that in at least half of them there was no statement which would prevent the use of funds for political purposes by the officers on their own initiative" (p. 68).

In Great Britain, where members of trade unions have traditionally been more unified in their political beliefs than in this country, political activities by trade unions have for years been subject to statutory regulation designed to achieve the objective sought to be achieved by the statute here involved, i. e., to keep the funds of the trade union from being used by those in control in support of political views not shared by the minority. See Rothschild, *Governmental Regulation of Trade Unions in Great Britain*, 38 Columbia Law Review 1, 1335 (1938).

In 1910 it was held that a labor union could not contribute money to the labor party for political purposes. *Amalgamated Society of Railway Servants* v. *Osborne* (1910) A. C. 87.

This limitation was modified in the Trade Union Act of 1913, 2 & 3 Geo. V, c. 30 (1913). In substance, this Act provided that a labor union might make contributions or expenditures for political purposes only on the following conditions:

(a) That a majority of the members vote that a political fund be created.

(b) That any member who objected to making a contribution to the fund should

be exempt and should not be discriminated against for having made this choice.

(c) That the political fund should be kept separate from the general union funds and that the rules governing the establishment of the political fund and the use of the political fund should be subject to the approval of the Registrar of Friendly Societies.

The political objects to which the statute applied were listed as:

(a) payment of any expenses incurred directly or indirectly by a candidate for Parliament or other public office before, during or after the election in connection with his candidature.

(b) the holding of any meeting or the distribution of any literature or documents in support of any such candidate or prospective candidate.

(c) the maintenance of any person who is a member of Parliament or other public office.

(d) expenditure in connection with the registration of electors or the selection of a candidate for Parliament or other public office; and

(e) the holding of political meetings of any kind and the distribution of political literature or political documents of any kind unless the main purpose of the meeting or the distribution of literature and

documents is in furtherance of nonpolitical purposes.*

Various changes in the 1913 Act had been sought from time to time. The national strike of 1926 gave this movement impetus and it materialized in the Trade Disputes and Trade Unions Act of 1927. (17 & 18 Geo. V, c. 22 (1927).) In so far as the political contribution provision is concerned, the only significant change effected by the 1927 Act was to place the burden on labor unions desiring to participate in political activities to obtain written consent from each union member prior to obtaining or levying a contribution or assessment on such member, whereas under the 1913 Act the burden had been on the union member to state in writing his objection to making a political contribution in order to secure exemption therefrom. The 1927 Act also requires a separate levy for political contributions, whereas under the 1913 Act a general levy with an appropriate reduction for those claiming an exemption might be made.

It is interesting to note that, despite these limi-

* It appears that the 1913 Act was not intended to apply to political newspapers or to expenditures for union meetings or distribution of literature which has only an incidental political purpose such as the passage of legislation in which labor unions are interested. See *Rothschild, op. cit. supra*, 38 Col. L. Rev. 1364. But, in view of the specific phraseology of the 1913 act, referred to above, it is clear that the British act applies to expenditures for political purposes as well as contributions.

tations, the political voice of labor was so far from silenced that the Labor Party was able to come into power and was able to repeal the 1927 Act. Trade Disputes and Trade Union Act, 1946, 9 & 10 Geo. VI, c. 52. The Labor Party itself left in force the provisions of the 1913 Act.

It is no answer to the Congressional purpose to assert, as did the court below, that labor organizations normally act by majority rule. The very fact that they do act by majority rule permits undue and disproportionate influence by persons in control of the organization who can thus exercise the whole power of the organization in support of the particular views which they favor. The case of *De Mille* v. *American Federation of Radio Artists*, 31 Cal. 2d 137, pending on petition for certiorari, No. 679, this Term, in which the suspension of a member of a labor union for failure to pay a political assessment was upheld on the theory that he was bound by the majority decision, serves to demonstrate the need for the legislation here involved, if individuals who join a labor organization or stockholders who buy stock in a corporation are not to be coerced into supporting views which they do not entertain. And in order to make certain that political activities by union members or corporate stockholders are in truth, and in fact completely voluntary acts, free from the pressure of the group, Congress has in effect required that political activities be kept apart from the regular function of the organization.

This statute was designed to prevent active electioneering by mass organizations in a position to exercise tremendous power, which, as entities, have no right to vote. Mass weight is being curbed in a field in which the individual, the voter, is the significant factor. And while, of course, individuals may and should combine to give expression to their views, this legislation is designed to make certain that individuals who desire so to act, do so voluntarily and not under compulsion of an organization which they have joined for another purpose.

4. *The danger is a present one.*—Certainly it cannot be said that the danger sought to be reached by this statute is not a present one. The activities with which Congress is dealing in this statute are not activities designed to effect some remote, future result. The only activity barred is activity designed to have an immediate influence on a pending election. And the statute was extended to cover expenditures in addition to contributions because Congress found that contributions had in fact been made in the guise of expenditures. Cases which deal with the question of whether particular utterances would tend to bring about the evil which could be prevented thus have no relevancy to the issues here, e. g. *Bridges* v. *California,* 314 U. S. 252; *Craig* v. *Harney,* 331 U. S. 367. The only danger to which this statute is directed is an immediate and a present one.

Congress has thus found that the use of the

aggregate wealth of corporations and labor organizations, by persons in control thereof, to further political views not necessarily shared by the persons who contributed to that aggregate wealth represents a clear and present danger to free federal elections. The cases indicate that the legislative judgment in this regard is entitled to great weight, and, as we have shown, substantial considerations support the legislative judgment. The decision below is, in essence, the substitution of a judicial opinion on matters of policy for the legislative judgment in an important area of federal power. That, we submit, is not the proper function of the courts.

III

SECTION 304 IS NOT INVALID FOR INDEFINITENESS

Respondents have indicated that they intend to renew the contention made in the Court below that the prohibition against "expenditure in connection with any election" to the offices specified in the statute is so vague and uncertain that it fails to set up a definite standard of guilt, and hence that the statute is a violation of the Fifth and Sixth Amendments, as well as improper legislation restricting First Amendment rights.

We submit that, fairly read, as it must be, in the light of its legislative history and manifest purpose, the statute is not subject to criticism on the ground of indefiniteness. There is a whole mass of situations, a great variety of activities,

commonly described as electioneering, which, when undertaken by corporations or labor organizations, clearly fall within the interdiction of the statute. The only area of doubt lies in the possible existence of border line cases, and that, as we discuss in more detail *infra*, is not sufficient to render a statute constitutionally vulnerable. *United States* v. *Petrillo*, 332 U. S. 1, 7.

A. *"In connection with any election" as used in Section 304 means for the purpose of influencing the result of the election*

Section 304 of the Labor Management Relations Act is merely one aspect of the exercise of the congressional power to control the influence of money in federal elections. Specifically, it is an amendment to Section 313 of the Corrupt Practices Act of 1925, which was itself a reenactment of the Act of January 26, 1907. Since 1907, therefore, a statute has prohibited contributions by corporations "in connection with" federal elections, and no one seems to have any doubt as to the meaning of the phrase "in connection with" elections. We submit that, considering the statute here involved in relation to its place in the statutory scheme and its purpose as revealed by its legislative history, "expenditure in connection with" an election can have only one meaning, i. e., expenditure for the purpose of influencing the result of an election for the offices specified in the statute.

That such is the proper interpretation becomes perfectly clear when the section here involved is read in relation to other provisions of the Corrupt Practices Act. Thus, Section 306 of the 1925 Act (2 U. S. C. 245) requires a statement by every person other than a political committee who makes an expenditure "for the purpose of influencing in two or more States the election of candidates"; Section 307 (2 U. S. C. 246) requires a statement by a candidate of expenditures made by him or with his knowledge and consent "in aid or support of his candidacy for election, or for the purpose of influencing the result of the election." "In connection with" an election was apparently kept in Section 313 because that section was taken over directly from the 1907 Act, but it obviously was intended to serve the same purpose as the more artistic phraseology in the sections quoted above.

Furthermore, the entire legislative history of Section 313 from its first enactment to its last amendment, which we have detailed in Point I, shows that its only purpose was to prevent the undue influence of aggregate wealth on federal elections. The prohibition against expenditures "in connection with" elections must therefore mean for the purpose of influencing the result of elections.

B. *The statute thus has an element of scienter which serves to give definiteness to its scope*

Obviously, if an expenditure must be made for the purpose of influencing an election, the persons

making the expenditure must have a purpose. Hence, although the statute does not use the word willful, *scienter*, purposefulness, is a necessary element of the offense. In no case in which *scienter* was clearly made an element of the offense has this Court held a statute invalid for indefiniteness.[10] And, conversely, in a number of cases the Court has clearly indicated that the presence of such a requirement removes any question as to an act's validity. *United States* v.

[10] Section 4 of the Lever Act was held invalid in *United States* v. *Cohen Grocery Co.*, 255 U. S. 81; *Weeds, Inc.* v. *United States*, 255 U. S. 109; *Small Co.* v. *American Sugar Ref. Co.*, 267 U. S. 233. The statute as quoted in 255 U. S. at 86 reads as though intent was required. But the full text of the Section, as set out in 255 U. S. at 81–82, shows that intent was no part of the clauses under attack.

The accumulation of statutes held invalid in *International Harvester Co.* v. *Kentucky*, 234 U. S. 216, and *Collins* v. *Kentucky*, 234 U. S. 634, was construed by the state court to make unlawful any combination "for the purpose *or with the effect* of fixing a price that was greater or less than the real value of the article" (234 U. S. at 221.) [Italics added.]

The statute condemned in *Herndon* v. *Lowry*, 301 U. S. 242, did not in terms require intent, but, as construed by the state court, punished the attempt to incite insurrection, if force was contemplated by the inciter "at any time within which he might reasonably expect his influence to continue" (301 U. S. at 254–255). The statute as thus construed might be thought to require either (1) an intent to stimulate force and violence, or (2) an intent to utter words which "might, at some time in the indefinite future" (301 U. S. at 262), lead to force and violence. It is clear that this Court adopted the latter construction, and thus assumed that the statute reached a person, "however peaceful his own intent" (301 U. S. at 262).

Ragen, 314 U. S. 513, 523–524; *Gorin* v. *United States,* 312 U. S. 19, 27–28; *Screws* v. *United States,* 325 U. S. 91, 101–105; *Omaechevarria* v. *Idaho,* 246 U. S. 343, 348; *Hygrade Provision Co.* v. *Sherman,* 266 U. S. 497, 502–503. This line of demarcation is entirely reasonable. "The constitutional vice" in an indefinite statute "is the essential injustice to the accused of placing him on trial for an offense, the nature of which the statute does not define and hence of which it gives no warning. See *United States* v. *Cohen Grocery Co.* [255 U. S. 81], *supra.* But where the punishment imposed is only for an act knowingly done with the purpose of doing that which the statute prohibits, the accused cannot be said to suffer from lack of warning or knowledge that the act which he does is a violation of law. The requirement that the act must be willful or purposeful may not render certain, for all purposes, a statutory definition of the crime which is in some respects uncertain. But it does relieve the statute of the objection that it punishes without warning an offense of which the accused was unaware." *Screws* v. *United States,* 325 U. S. at 101–102. In *United States* v. *Ragen,* 314 U. S. at 524, the Court said with respect to a similar statutory provision: "On no construction can the statutory provisions here involved become a trap for those who act in good faith. A mind intent upon willful evasion is inconsistent with surprised innocence."

In this statute, the prohibition against expenditures for the purpose of influencing a federal election has a meaning which, even apart from *scienter,* the ordinary person would have no difficulty in understanding and applying, except in the inevitable border line cases. The necessity that the act be done for the purpose of influencing the election will serve to remove the danger of a person inadvertently involving himself within the border line area. There may be questions of fact for a jury to determine whether a particular expenditure was made for the purpose of influencing a particular election; there may be questions of interpretation as to whether a particular act is or is not an expenditure. But, since the person acting must have the purpose to influence federal elections, the act cannot "become a trap for those who act in good faith" without intending to accomplish the purpose which Congress has declared to be illegal. As this Court said in *United States* v. *Wurzbach,* 280 U. S. 396, 399, in regard to a statute prohibiting solicitation of money from government employees for political purposes: "Whenever the law draws a line there will be cases very near each other on opposite sides. The precise course of the line may be uncertain, but no one can come near it without knowing that he does so, if he thinks, and if he does so it is familiar to the criminal law to make him take the risk. *Nash* v. *United States,* 229 U. S. 373."

C. *The possible existence of border line cases does not make a law unconstitutionally indefinite*

All that respondents can point to in support of their claim of indefiniteness is the possible existence of border line cases. Thus it may not always be possible to fix with absolute certainty the moment when a person can be said to be a candidate for office; it may not always be possible to say beforehand whether a particular activity can be deemed to have been undertaken for the purpose of influencing a particular election. But no one who has lived through an election campaign in this country can fail to know the difference between general discussion of political issues which may have a remote effect on an election, and the type of activity, commonly known as electioneering, in a campaign year. And no corporation or labor organization spending money actively to electioneer for the success or defeat of a particular candidate can have any doubt that its activity in such respect contravenes the express prohibition of the statute.

Similarly, as the legislative discussion dealing with newspapers highlights (see *supra*, pp. 45–49), questions may arise as to whether the expenditure of funds by a corporation or a labor organization is an expenditure for the purpose of influencing an election. The sponsors of this legislation have expressed the opinion that, when it is the regular business of an organization such as a newspaper to express views on political mat-

ters, the continuance of such practice during the election period, even though it necessarily involves the expenditure of money and the purpose to influence an election, would not be an expenditure for the purpose of the election (see *supra*, pp. 47–49). The necessity for interpretation as to this particular set of facts does not, however, render the statute constitutionally indefinite. It merely shows that a doubtful case may arise. It is still true that no corporation, not even a newspaper, engaged in active electioneering beyond its regular business could, under this statute, have any doubt that its activities came within the prohibition of the statute.[11]

[11] The necessity for interpretation could arise in this case to the extent that respondents might contend that the expression of political views in their regular newspaper was as much the regular business of the organization as the expression of political views by regularly published daily newspapers. That would be a matter of fact to be developed at a trial. See *United States* v. *Petrillo*, 332 U. S. 1, 11–12. Furthermore, the indictment alleges that funds were expended to print and transport one thousand extra copies of the newspaper in connection with the election. Such extra expenditure would clearly constitute direct electioneering activity within the interdiction of the statute, even if performed by a regular newspaper. (See *supra*, pp. 48–49.) The indictment is, of course, immune from attack on a motion to dismiss, if any of the means of committing the offense charged would, if proved, sustain the charge and uphold a conviction. *Sondericker* v. *United States*, 41 F. 2d 144, 146 (C. C. A. 7); see *Ford* v. *United States*, 273 U. S. 593, in which allegations found not to charge an offense were treated as surplusage. The district court specifically held that the indictment did charge an offense under the Act.

The possibility that border line cases may arise does not render a statute constitutionally indefinite. *United States* v. *Petrillo*, 332 U. S. 1, 7; *Robinson* v. *United States*, 324 U. S. 282, 285–286. As this Court said in the *Petrillo* case,

> That there may be marginal cases in which it is difficult to determine the side of the line on which a particular fact situation falls is no sufficient reason to hold the language too ambiguous to define a criminal offense.

Clearly there is under this statute a mass of situations to which the statute would unquestionably apply, and as to which the ordinary person would have no doubt of the statute's applicability. It clearly meets the test laid down by this Court in the *Petrillo* case; it [332 U. S. at 7–8]

> provides an adequate warning as to what conduct falls under its ban, and marks boundaries sufficiently distinct for judges and juries fairly to administer the law in accordance with the will of Congress. * * * The language here challenged conveys sufficiently definite warning as to the proscribed conduct when measured by common understanding and practices. The Constitution requires no more.

IV

SECTION 304 DOES NOT ARBITRARILY DISCRIMINATE AGAINST ORGANIZATIONS IN VIOLATION OF THE DUE PROCESS CLAUSE OF THE FIFTH AMENDENT

Respondents' further contention that Section 304 is such an arbitrary discrimination against

labor organizations that it violates the due process clause of the Fifth Amendment is answered by the legislative history of the statute. It is, of course, not true that the act is directed against labor alone; it is directed against corporations as well, and was directed against corporations long before any prohibition was imposed against labor organizations.

In this field, Congress has acted to meet evils as it found them. It has waited until a particular danger seemed to it to become pressing before taking action thereon. Thus, the ban against contributions by corporations was imposed years before limitations were placed on labor organizations because only the use of the aggregate wealth of corporations to influence elections was found to be an evil in the early part of the century. Not until labor organizations became strong enough and powerful enough so that the group in control thereof was able, by the use of the power arising from combination, to exert disproportionate influence on elections, not until Congress had before it evidence of the use of that power to influence elections, did Congress undertake to extend the prohibition theretofore imposed against corporations to labor organizations. Not until Congress had before it substantial evidence that the prohibition against contributions was being evaded by contributions in the form of expenditures did it undertake to prohibit expenditures as well as contributions.

As to the contention that the rationale which supports the ban against corporations and labor organizations would justify the extension of the act to other organizations as well, the answer was given by Senator Taft in the course of the debates on this provision (93 Cong. Rec. 6440):

> * * * if any abuses arise with respect to other organizations we can extend the provision of law to the other groups.

As this Court has said in *National Labor Relations Board* v. *Jones & Laughlin Steel Corporation*, 301 U. S. 1, 46:

> * * * We have frequently said that the legislative authority, exerted within its proper field, need not embrace all the evils within its reach. The Constitution does not forbid "cautious advance, step by step," in dealing with the evils which are exhibited in activities within the range of legislative power. *Carroll* v. *Greenwich Insurance Co.*, 199 U. S. 401, 411; *Keokee Coke Co.* v. *Taylor*, 234 U. S. 224, 227; *Miller* v. *Wilson*, 236 U. S. 373, 384; *Sproles* v. *Binford*, 286 U. S. 374, 396. * * *

See also *Alabama State Federation of Labor* v. *McAdory*, 325 U. S. 450, 471–472, where the Court said:

> The contention that the Act denies equal protection because its provisions, or some of them, have not been extended to business corporations or associations or to labor organizations which are subject to the Rail-

> way Labor Act, 45 U. S. C. § 151 *et seq.*, is without substance. The Constitution does not oblige a state to regulate or reform all types of associations and organizations, or none. It may begin with such as in its judgment most need regulation. *Carroll* v. *Greenwich Insurance Co.*, 199 U. S. 401, 411; *Keokee Coke Co.* v. *Taylor*, 234 U. S. 224, 227; *Bunting* v. *Oregon*, 243 U. S. 426; *Sproles* v. *Binford*, 286 U. S. 374, 396; cf. *West Coast Hotel Co.* v. *Parrish*, 300 U. S. 379, 400, and cases cited. * * *

In *Central Lumber Co.* v. *South Dakota*, 226 U. S. 157, 160, the Court pointed out that a legislature—

> * * * may direct its law against what it deems the evil as it actually exists without covering the whole field of possible abuses, and it may do so none the less that the forbidden act does not differ in kind from those that are allowed. *Lindsley* v. *Natural Carbonic Gas Co.*, 220 U. S. 61, 81. *Missouri Pacific Ry. Co.* v. *Mackey*, 127 U. S. 205.

See also *Carroll* v. *Greenwich Insurance Co.*, 199 U. S. 401, 411; *Keokee Coke Co.* v. *Taylor*, 234 U. S. 224, 227; *Hirabayashi* v. *United States*, 320 U. S. 81, 100.

It should be noted that, as this Court has frequently stated, "Unlike the Fourteenth Amendment, the Fifth contains no equal protection clause and it provides no guaranty against discriminatory legislation by Congress." *LaBelle*

Iron Works v. *United States*, 256 U. S. 377, 392; *Steward Machine Co.* v. *Davis*, 301 U. S. 548, 584–585; *Sunshine Coal Co.* v. *Adkins*, 310 U. S. 381, 400, 401; *Helvering* v. *Lerner Stores Co.*, 314 U. S. 463, 468; *Detroit Bank* v. *United States*, 317 U. S. 329, 337–338; *Hirabayashi* v. *United States*, 320 U. S. 81, 100. Any legislative classification which is not so arbitrary as to deny due process of law will therefore be upheld, and the Court has stated, what the above cases clearly imply, that the due process clause imposes "restraints less narrow and confining" than the equal protection clause. *Steward Machine Co.* v. *Davis*, 301 U. S. 548, 584.

Certainly, labor organizations are different in character, scope and purpose from other types of unincorporated associations, as the very existence of the Wagner Act and its subsequent modification in the Labor Management Relations Act shows. The legislative history of Section 304 shows that Congress did not extend the act to cover unincorporated associations of employers, the type of unincorporated association most analagous to labor organizations in relation to the purpose of the statute here involved, because it felt that the existing ban against contributions and expenditures by corporations was sufficient to prevent the use of corporate funds for political purposes through the medium of unincorporated associations. (See *supra*, pp. 51–52.) As pointed

out above, the legislative history also shows, that other types of unincorporated associations were not brought under the interdiction of the statute because Congress had not found any danger to the election process from such groups. Under the circumstances, the legislative judgment that only the aggregate wealth of corporations and labor organizations represented a danger to the election process cannot be deemed an arbitrary discrimination in violation of the Fifth Amendment.

As this Court said in *United States* v. *Petrillo*, 332 U. S. 1, 8–9:

> * * * it is not within our province to say that, because Congress has prohibited some practices within its power to prohibit, it must prohibit all within its power. * * * Nor could we strike down such legislation, even if we believe that as a matter of policy it would have been wiser not to enact the legislation or to extend the prohibitions over a wider or narrower area.

Congress has advanced step by step to meet the evils as it found them arising from the use of the aggregate wealth of entities to exercise the whole combined power of the organization in support of the views of those in control which may not represent the views of all the members. It has taken action only where it found danger. That is not unconstitutional discrimination.

CONCLUSION

The judgment below should be reversed.

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